

RECORDATION NO

FILED 1425

APR 18 1991 -12 45 PM

# WHITE & CASE

INTERSTATE COMMERCE COMMISSION

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WASHINGTON, D C

1155 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10036-2787

20-5, ICHIBANCHO, CHIYODA-KU, TOKYO

15 QUEEN'S ROAD CENTRAL, HONG KONG

633 WEST FIFTH STREET, LOS ANGELES

(212) 819-8200

50 RAFFLES PLACE, SINGAPORE

200 SOUTH BISCAYNE BOULEVARD, MIAMI

FACSIMILE (212) 354-8113

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20 PLACE VENDÔME, PARIS

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66 GRESHAM STREET, LONDON

RECORDATION NO 17285

BIRGER JARLSGATAN 14 STOCKHOLM

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AVENUE DE LA RENAISSANCE 1, BRUSSELS

2013 WALI AL-AHD (P O BOX 2256), JEDDAH

(JOINT OFFICE WITH DERINGER,  
TESSIN, HERRMANN & SEDEMUND)

MRB:JC

INTERSTATE COMMERCE COMMISSION

April 18, 1991

re Documents For Recordation,  
49 USC Section 11303

1-108A013

Office of the Secretary  
Recordations Unit, Room 2302  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

APR 18 1991 -12 45 PM

INTERSTATE COMMERCE COMMISSION

Attention: Ms. Mildred Lee

Dear Ms. Lee:

Enclosed herewith are two originally executed and acknowledged copies of the three documents described below, to be recorded today pursuant to Section 11303 of Title 49 of the U.S. Code.

The first document, identified as "Lease Agreement [B]", dated as of March 1, 1991, is a lease and is a primary document.

The names and addresses of the parties to such document are as follows:

LESSOR: The Connecticut National Bank,  
as Owner Trustee  
777 Main Street  
Hartford, CT 06115

*Countersignature*  
*[Signature]*

APR 18 1991 -12 45 PM

APR 18 1991 -12 45 PM

LESSEE: ASARCO Incorporated  
180 Maiden Lane  
New York, New York 10038

A description of the equipment covered by the document is attached hereto as Schedule A.

A short summary of the document to appear in the Index should be as follows:

Lease Agreement [B] dated as of March 1, 1991 between the Connecticut National Bank, as Owner Trustee, Lessor and ASARCO Incorporated, Lessee, covering two Insulated Tank railcars and 215 Tank railcars.

The second document, identified as "Indenture and Security Agreement [B]", dated as of March 1, 1991 is a loan agreement and is a primary document which is being filed concurrently with the above-referenced primary document to which recordation numbers have not yet been assigned.

The names and addresses of the parties to such document are as follows:

LESSOR: The Connecticut National Bank,  
as Owner Trustee  
777 Main Street  
Hartford, CT 06115

INDENTURE  
TRUSTEE: State Street Bank and  
Trust Company of Connecticut,  
National Association  
750 Main Street  
Hartford, Connecticut 06103

A description of the equipment covered by this document is attached hereto as Schedule A.

A short summary of the document to appear in the Index should be as follows:

Indenture and Security Agreement [B] dated as of March 1, 1991 between The Connecticut National Bank, not in its individual capacity except as expressly provided therein but solely as trustee, as Owner

Trustee and State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity except as provided expressly therein but solely as trustee, as Indenture Trustee covering two Insulated Tank railcars and 215 Tank railcars.

The third document, identified as "Lease and Indenture Supplement No. 1 [B]", dated April 18, 1991 is a supplement to the Lease Agreement [B] and the Indenture and Security Agreement [B] and is a secondary document which is being filed concurrently with the above referenced primary documents to which recordation numbers have not yet been assigned.

The names and addresses of the parties to such document are as follows:

LESSOR/OWNER

TRUSTEE: The Connecticut National Bank,  
as Owner Trustee  
777 Main Street  
Hartford, Connecticut 06115

LESSEE: ASARCO Incorporated  
180 Maiden Lane  
New York, New York 10038

INDENTURE

TRUSTEE: State Street Bank and Trust  
Company of Connecticut,  
National Association  
750 Main Street  
Hartford, Connecticut 06115

A description of the equipment covered by the document is attached hereto as Schedule A.

A short summary of the document to appear in the Index should be as follows:

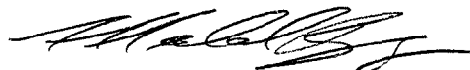
Lease and Indenture Supplement No. 1 [B] dated April 18, 1991 among the Connecticut National Bank, as Owner Trustee, ASARCO Incorporated and State Street Bank and Trust Company, National Association, not in its individual capacity but solely as Indenture

Trustee, covering two Insulated Tank railcars and 215 Tank railcars.

A check for the required recordation fee of \$45.00 is enclosed. Please return the originals and any extra copies not needed by the Commission for recordation to the undersigned.

The undersigned certifies that he is acting as counsel to ASARCO Incorporated, as Lessee, for purposes of this filing and that he has knowledge of the matters set forth in the above-described documents.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Michael R. Barz', with a stylized, flowing script.

Michael R. Barz

Enclosures

cc: Casimir C. Patrick, III, Esq.  
Clifford J. Hendel, Esq.  
Ali Abedi, Esq.  
Harriet Robinson, Esq.

SCHEDULE A

<u>Type of Railcar</u>	<u>Quantity of Railcars</u>	<u>Serial Number</u>
Insulated Tank Cars	2	ASTX 4001-4002
Tank Cars	55	ASTX 5001-5055
Tank Cars	50	ASTX 5065-5114
Tank Cars	60	ASTX 4010-4069
Tank Cars	50	ASTX 5120-5169

**Interstate Commerce Commission**  
Washington, D.C. 20423

4/18/91

OFFICE OF THE SECRETARY

Michael R. Barz

White & Case

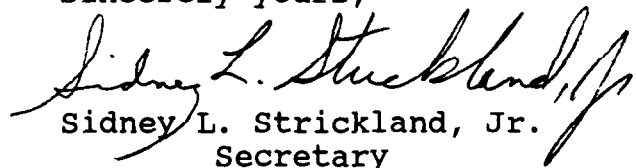
1155 Avenue Of The Americas

New York & N.Y. 10036

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/18/91 at 12:45pm, and assigned recordation number(s). 17285 17285-A & 17285-B

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

LEASE AGREEMENT [B]

Dated as of March 1, 1991

between

THE CONNECTICUT NATIONAL BANK,  
as Owner Trustee,  
as Lessor

and

ASARCO INCORPORATED,  
as Lessee

MOBILE MINING EQUIPMENT  
AND  
RAILROAD ROLLING STOCK

CERTAIN RIGHTS, TITLE AND INTEREST IN AND TO THIS LEASE AGREEMENT AND TO THE UNITS COVERED HEREBY ON THE PART OF THE CONNECTICUT NATIONAL BANK, AS OWNER TRUSTEE, HAVE BEEN ASSIGNED TO AND ARE SUBJECT TO A LIEN AND SECURITY INTEREST IN FAVOR OF STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE UNDER AN INDENTURE AND SECURITY AGREEMENT [B] DATED AS OF MARCH 1, 1991. TO THE EXTENT, IF ANY, THAT THIS LEASE AGREEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, ON THE SIGNATURE PAGE THEREOF.

[FILED WITH THE INTERSTATE COMMERCE COMMISSION  
PURSUANT TO 49 U.S.C. § 11303  
ON \_\_\_\_\_, 1991 AT \_\_\_\_:\_\_\_\_.M.  
RECORDATION NUMBER \_\_\_\_\_]

[This Agreement is one of 3 substantially identical Agreements styled on the cover pages thereof versions "A", "B" and "C" and relating respectively to 10-year Units other than shovels, 15-year Units and 10-year Units which are shovels.]

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Schedule 1 - Basic Rent

Exhibit A - Form of Lease and Indenture Supplement



LEASE AGREEMENT dated as of March 1, 1991 between THE CONNECTICUT NATIONAL BANK, a national banking association, not in its individual capacity but solely as trustee under the Trust Agreement (as defined in Schedule X hereto) (the "Lessor") and ASARCO INCORPORATED, a New Jersey corporation (the "Lessee").

The Lessor and the Lessee agree as follows:

SECTION 1. Definitions. The following terms shall have the following meanings for all purposes of this Lease:

(a) unless otherwise expressly provided, all references herein to Sections or other subdivisions refer to the corresponding Sections and other subdivisions of this Lease;

(b) the terms "hereof," "herein," "hereby," "hereto," "hereunder," "hereinafter" and "herewith" refer to this Lease; and

(c) all terms used herein which are defined in or by reference in Schedule X hereto (including all terms defined by reference therein to other instruments or to Sections and other subdivisions of this Lease) shall have the respective meanings stated or referred to in said Schedule X.

SECTION 2. Purchase and Lease; Redelivery and Storage; End of Term and Early Buyout Purchase Options; Renewal Term. (a) Purchase and Lease. Effective on the Closing Date, if the conditions set forth in Section 5 of the Participation Agreement have been satisfied, (i) the Lessor shall purchase from the Lessee the Units described in the Bill of Sale delivered on such date, (ii) the Lessor shall be deemed to have tendered delivery of such Units for lease to the Lessee and the Lessee shall be deemed to have accepted delivery thereof, (iii) the Lessor shall lease such Units to the Lessee and the Lessee shall lease such Units from the Lessor under this Lease for the Rent and Lease Term hereinafter stipulated and (iv) the Lessor and the Lessee shall conclusively evidence that such Units have been made subject to this Lease by executing and delivering a Lease and Indenture Supplement substantially in the form attached

as Exhibit A hereto covering the Units so purchased and leased.

(b) Redelivery and Storage. Upon the expiration or termination of this Lease with respect to any Unit, whether by the passage of time or otherwise, or if the Lessor shall demand possession thereof pursuant to Section 15, the Lessee shall forthwith surrender and return possession of such Unit to the Lessor in its original condition and appearance (ordinary wear and tear excepted) by, at the sole risk and expense of the Lessee, (a) de-identifying such Unit by removing any and all of the marks placed thereon by the Lessee or any sublessee, (b) in accordance with applicable Manufacturer's specifications, properly dismantling, preparing, crating, and/or assembling such Unit for shipment by common carrier and (c) shipping such equipment to the nearest railhead or if Lessor requests shipment by other common carrier to the nearest point of pick-up by such common carrier with insurance and freight prepaid. Without limiting the Lessee's obligations under any of the foregoing, the Lessee shall dismantle and prepare any Unit constituting shovels under the supervision of a representative of the Manufacturer and in accordance with the original factory component specifications and deliver any Unit constituting railcars or shovels to such spur line or railhead as may be specified by the Lessor. Furthermore, the Lessee shall, at the Lessor's request (i) at the Lessor's cost and expense, such cost, if imposed by Lessee, not to be unreasonably imposed, cause each of the Units to be overhauled, (ii) store at Lessor's risk any Unit free of charge for a period up to 60 Business Days and thereafter, at Lessor's cost (which shall be reasonably imposed), for so long as the storage facility is available, but in no event less than 120 Business Days and (iii) at the Lessor's cost and expense, arrange (to the extent reasonably available) for the extension of insurance coverage during such storage period on such Units beyond the expiration or termination of this Lease; provided that in the case of any Unit returned pursuant to Section 15, such Unit shall be so stored by the Lessee at Lessee's expense until such Unit shall have been sold, leased or otherwise disposed of by the Lessor, and Lessee shall, at its expense, insure such Unit during such period of storage in the manner herein provided in Section 10.

(c) Condition Upon Re-delivery. Any Unit redelivered to the Lessor hereunder shall be (i) free and clear of all liens and encumbrances (other than any Owner Encumbrances), (ii) in compliance with all Applicable Law

and the provisions hereof and, with respect to Units constituting railcars, the applicable industry standards and (iii) in as good condition, state of repair and appearance as when originally delivered to the Lessee, ordinary wear and tear excepted and with such changes or alterations as permitted by Section 7. The Lessee shall also deliver to the Lessor with each Unit, all manuals, specifications (including without limitation the original specifications) and inspection, modification, overhaul and maintenance records applicable to such Unit, all of which shall be in the English language. The Lessee covenants and agrees that with respect to each Unit redelivered under this Section 2 or otherwise to the Lessor and at the time of such redelivery, notwithstanding any other provision of this Lease to the contrary and irrespective of whether any of the following constitutes "ordinary wear or tear" under any other provision of this Lease, (i) each of the tires shall have a minimum of 50% tread depth remaining, (ii) with respect to the Units constituting bulldozers or loaders, each of the undercarriages thereof shall have at least five years of its useful life remaining, (iii) there shall not have been any structural or unrepaired frame damage or material broken glass or sheet metal damage, (iv) the engine oil shall be free of water, metal particles or any other foreign items and (v) each of the tank cars shall have been relined within three years of the date of redelivery (without limiting the Lessee's obligations under the second sentence of Section 5). Without limiting any of the foregoing, all Units redelivered under this Section 2 shall be at least in such condition as to be capable of passing applicable Manufacturer's inspection.

(d) Purchase at Expiration of Lease Term; Renewal Term. (i) The Lessee shall, by notice to the Lessor and the Owner Participant at any time not less than 270 days prior to the expiration of the Basic Term, cause a determination of the Fair Market Sale Value of the Units as of the expiration of the Basic Term then subject to this Lease to be made in accordance with the Appraisal Procedure, provided that the making of such determination pursuant to this clause (i) shall not be deemed an election by the Lessee to purchase the Units pursuant to the provisions of this paragraph (d).

(ii) The Lessee is hereby granted the option, provided that no Lease Event of Default or Lease Default (other than a Lease Default arising from a breach of a covenant or representation relating solely to the Units to be purchased) hereof shall have occurred and be continuing,

to purchase all, or less than all, of the Units then subject to this Lease at the expiration of the Basic Term for an amount equal to the Fair Market Sale Value of the Units determined in accordance with clause (i) above then subject to this Lease. In the event that the Lessee elects to exercise such option, the Lessee shall (x) provide the Lessor with a notice irrevocably making such election and identifying the Units as to which such option is being exercised at least 180 days prior to the expiration of the Basic Term and (y) pay to the Lessor, on the expiration of the Basic Term, an amount equal to the Fair Market Sale Value for such Units as provided above, and upon such payment and the payment by the Lessee of all Rent payable on or before such expiration date with respect to the Units, the Lessor shall transfer all its right, title and interest in and to such Units to the Lessee, without any representation, recourse or warranty on the part of the Lessor except that the Lessor shall warrant to the Lessee that such Units are free and clear of all Owner Encumbrances and subject to a disclaimer satisfactory to the Lessor and the Indenture Trustee of all liabilities, including tort and contract with respect to such Unit.

(iii) In the event the Lessee shall not have elected to purchase all of the Units pursuant to clause (ii), the Lessor and the Lessee may, by mutual agreement, extend the term of this Lease for a term mutually agreed by the Lessor and the Lessee for a rental determined in accordance with the Appraisal Procedure (the "Renewal Term").

(iv) At the expiration of the Basic Term, in the event all of the Units are not purchased pursuant to clause (ii) of this paragraph (d) and the Lease is not renewed pursuant to clause (iii) of this paragraph (d) and at the end of the Renewal Term, if any, the Lessee shall redeliver the Units in accordance with the terms and conditions of Section 2(b). In addition, the Lessee will provide the Lessor with such reasonable assistance and advice as the Lessor may reasonably request in connection with the orderly return and disposition of the Units including re-marketing services, if the Lessee shall then be in the business of re-marketing equipment such as the Units and the Lessor shall pay the Lessee such reasonable fee as Lessee customarily imposes for such re-marketing services.

(e) Early Buyout Purchase Option. Provided this Lease has not been earlier terminated and no Lease Event of Default or Lease Default (other than a Lease Default arising

from a breach of a covenant or representation relating solely to the Units to be purchased) shall have occurred and be continuing, upon not less than 180 days notice prior to March 1, 2004, the Lessee may give written notice to the Lessor (a copy of which shall be delivered simultaneously to the Indenture Trustee) that the Lessee elects to purchase some or all of such Units then under this Lease at the purchase price of 42% of Lessor's Cost for such Units plus the Premium, if any, payable pursuant to Section 401(c) of the Indenture (the "Early Buyout Purchase Price"), provided that the Lessee may not exercise its purchase option hereunder unless it elects to (i) purchase all of the Units then subject to this Lease or (ii) purchase all of the Units then subject to this Lease which were originally located at one or more of (x) the Ray, Arizona site, (y) the Mission, Arizona site, or (z) at all sites (other than the Ray, Arizona or Mission, Arizona sites) identified on the Bill of Sale. If the Lessee shall fail to give such notice, the Lessee shall have no further right to purchase such Units under this paragraph (e). If the Lessee shall give such notice, the Lessee shall purchase such Units on March 1, 2004 at the Early Buyout Purchase Price and the Lessor shall forthwith convey and transfer to the Lessee such right and interest with such warranties and such disclaimers of warranties and liabilities as are provided in Section 2(d)(ii).

SECTION 3. Disclaimer of Warranties. (a) No Representation or Warranty. THE LESSEE ACKNOWLEDGES THAT (i) THE UNITS ARE OF DESIGN AND MANUFACTURE SELECTED BY THE LESSEE, (ii) THE UNITS ARE SUITABLE FOR THE LESSEE'S PURPOSES AND (iii) NEITHER THE LESSOR, THE OWNER PARTICIPANT, THE OWNER PARTICIPANT GUARANTOR, THE INDENTURE TRUSTEE NOR ANY LOAN PARTICIPANT IS A MANUFACTURER OR DEALER IN SUCH PROPERTY. THE LESSEE ACKNOWLEDGES THAT NONE OF THE OWNER PARTICIPANT, THE OWNER PARTICIPANT GUARANTOR, THE LESSOR, THE INDENTURE TRUSTEE NOR ANY HOLDER MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE DESIGN, OPERATION OR CONDITION OF THE UNITS OR AS TO THE TITLE, VALUE, CONDITION, DESIGN OR MERCHANTABILITY OF THE UNITS, OR AS TO THE FITNESS OF THE UNITS FOR ANY PARTICULAR USE OR PURPOSE, OR, EXCEPT AS SET FORTH IN SECTION 3(b), ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNITS AND UNDER NO CIRCUMSTANCES WHATSOEVER SHALL CNB OR THE LESSOR, THE OWNER PARTICIPANT, THE OWNER PARTICIPANT GUARANTOR, THE INDENTURE TRUSTEE OR ANY HOLDER BE LIABLE OR RESPONSIBLE TO THE LESSEE FOR ANY DAMAGES ARISING OUT OF THE FOREGOING.

(b) Title. Notwithstanding the provisions of the foregoing paragraph (a), the Lessor represents and warrants that on the Closing Date it will have whatever title to the Units being delivered on such date as has been conveyed to it on such date by the Lessee, subject to no Owner Encumbrances.

SECTION 4. Use and Operation of Units. During the Lease Term, so long as no Lease Event of Default shall have occurred and shall be continuing, the Lessee shall have the exclusive right to possession, control and full use of the Units leased hereunder and will use such Units in compliance with Applicable Law and the provisions hereof provided, that in no event shall more than ten percent of the Units subject to this Lease which are railroad tank cars, if any, be located at any one time in Mexico or Canada and provided further that the Lessee shall be entitled to the possession and use of the Units which are railroad tank cars, if any, by it or any sublessee under a sublease permitted by Section 13(b) upon lines of any railroad or other trackage over which railroad equipment is regularly operated and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through or trip-lease agreements or pursuant to necessary maintenance arrangements. Lessee agrees not to use any Unit which is not a railroad tank car outside the United States. The Lessee will not use or operate any Unit constituting railroad tank cars or cause any such Unit to be used or operated unless such Unit is used to contain or transport sulfuric acid.

SECTION 5. Maintenance. The Lessee, at its own expense and risk shall throughout the Lease Term maintain and repair the Units so as to keep the Units (1) in as good operating order, repair and condition as originally delivered to the Lessee, reasonable wear and tear excepted, (2) in compliance with any and all Applicable Law or insurance policies (other than such non-compliance as would not have a material adverse effect on the Units) and the insurance provisions hereof, (3) at a level of maintenance comparable to that used on all similar equipment owned or operated by the Lessee and (4) in a manner consistent with Applicable Manufacturers' warranties. Without limiting any of the Lessee's obligations specified in the foregoing, the Lessee shall, at its own cost and expense, cause each of the Units which are railroad tank cars, if any, to be relined at least once in the first ten years and every five years thereafter, provided that nothing contained herein is intended or shall

be construed to limit the Lessee's obligations under Section 2(c)(v). The Lessee will maintain all records, logs and other materials with respect to the Units as are maintained by the Lessee with respect to similar equipment owned or operated by it or as is required by any governmental authority having jurisdiction over the Units.

SECTION 6. Inspection. The Lessor, any Participant and the Indenture Trustee, or their authorized representatives, may at any time, upon reasonable notice and at their own risk and (except in respect of an inspection during the continuance of a Lease Event of Default) expense, inspect the Units and applicable maintenance and use records relating thereto, and the Lessee shall make the foregoing available to the Lessor, any Participant or the Indenture Trustee, but neither the Lessor, any Participant nor the Indenture Trustee shall have any duty to do so; provided, however, that any such inspection shall in no way interfere with any repairs or maintenance or the use and operation of the Units; and provided further, that in exercising such right of inspection, unless a Lease Event of Default shall have occurred and be continuing, (i) such party shall not unreasonably interfere with the Lessee's normal business operations and (ii) such party shall hold the Lessee harmless from any claims resulting from injury, loss or death sustained by such party's representatives on the Lessee's premises during any such inspection except to the extent that any such injury, loss or death occurs as a result of the Lessee's negligence or willful misconduct or the Lessee's breach of any Operative Document.

SECTION 7. Improvements; etc. (a) Improvements. The Lessee shall make such Improvements to the Units as shall be required in order to comply with Sections 4 and 5 or otherwise comply with Applicable Law. In addition, the Lessee may make such other Improvements to the Units as the Lessee may deem desirable if they do not impair the fair market value, residual value, utility or remaining useful life of the Units, affect any applicable warranties or change their intended functions or violate any Applicable Law.

(b) Title; Removal of Severable Improvements. Title to each Nonseverable Improvement shall, without further act, vest in the Lessor. Title to each Severable Improvement shall, without further act, vest or remain, as the case may be, in the Lessee, and the Lessee at its own expense and risk shall have the right to remove any Severable Improvement to which the Lessee has title from the

Units at any time during the Lease Term if such removal does not impair the fair market value, residual value, utility, remaining useful life or intended function (determined as if such Improvements had not been made) of the Units and assuming that any such Units were in the condition required by Section 5 hereof. Any Severable Improvement not so removed shall become the property of the Lessor. The Lessor shall have the right to purchase any Severable Improvements from the Lessee upon the expiration of the Lease Term in consideration of the payment to the Lessee of the Fair Market Sale Value thereof (as determined pursuant to the Appraisal Procedure).

(c) Removal of Property; Replacements. The Lessee may, in the ordinary course of maintenance or repair of any Unit, remove any item of property constituting a part of such Unit, and unless the permanent removal of such item is required by Section 5, the Lessee shall replace such item as promptly as possible by an item of property with the same intended function that is free and clear of all liens, encumbrances and rights of others (other than Permitted Encumbrances) and subject to the lien of the Indenture and in as good operating condition as, and with a fair market value, residual value, utility and remaining useful life at least equal to, the item of property being replaced. Any item of property removed from such Unit as provided in the preceding sentence shall remain the property of the Lessor until replaced in accordance with the terms of said sentence, but shall then, without further act, become the property of the Lessee. Any such replacement property shall, without further act, become the property of the Lessor and be deemed part of such Unit for all purposes hereof, subject to the lien of the Indenture.

(d) Identification Marks. The Lessee will (i) cause, prior to a given Unit becoming subject to the terms of this Lease, such Unit to be kept numbered with the identifying number as set forth in Schedule 1 to the Lease and Indenture Supplement executed and delivered on the Closing Date and (ii) keep and maintain, as soon as practicable (but in any event within 90 days) after such Unit becomes subject to the terms of this Lease, plainly, distinctly, permanently and conspicuously marked on each Unit, if any, constituting railroad rolling stock, on both sides of such Unit in letters not less than one inch in height, the words "Owned by a bank or trust company and subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from



time to time may be required by Applicable Law in order to protect the title of the Lessor and the rights of the Lessor and the Indenture Trustee under the Operative Documents, and will replace promptly any such word or words which may be removed, defaced, obliterated or destroyed. The Lessee will not permit the identifying number of any Unit to be changed except in accordance with a Lease amendment or statement of new identifying numbers to be substituted therefor, which Lease amendment or statement shall have been previously filed, recorded or deposited in all public offices, if any, where this Lease will have been filed, recorded and deposited; and the Lessee shall provide to the Indenture Trustee and the Lessor an opinion of counsel to such effect and to the further effect that such filing, depositing and recordation constitute notice to and is enforceable against all persons and that no other filing, depositing or recordation under any law of any jurisdiction is necessary to protect the interests of the Indenture Trustee and the Lessor in such Units. The Lessee shall have the right at its expense to display indicia of operation of any Unit by the Lessee or any Affiliate of the Lessee and identify such Unit with such name as the Lessee may elect. Lessee will not allow the name of any other person to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

(e) Limited Use Property. Notwithstanding any provision of this Section to the contrary, the Lessee shall make no modification, alteration, change, substitution or other improvement to any Unit, or any part thereof, that would cause such Unit to become "Limited use property" within the meaning of Rev. Proc. 76-30.

SECTION 8. Liens. (a) Liens. None of the Lessee and any sublessee nor any other Person shall directly or indirectly have any right, power or authority to create, assume, incur or permit to exist any lien or security interest on or with respect to any Unit, other than Permitted Encumbrances. The Lessee shall notify the Lessor promptly of the imposition of any such lien or security interest and shall promptly cause the same to be discharged, dismissed or removed, and in any event within 30 days after the Lessee first knows of the existence of any lien or security interest; provided, that notwithstanding the foregoing, the Lessee shall have the right to contest any such lien or security interest by Permitted Contest.

(b) Release of Liens. The Lessee agrees that it will at its own cost and expense promptly take such action

as may be necessary duly to discharge any liens and security interests that are not Permitted Encumbrances or Owner Encumbrances or in the event that any Unit shall be attached, levied upon or taken into custody, or detained or sequestered, by virtue of any proceeding in any court or tribunal, or by any governmental or other authority on account of any such lien or security interest, the Lessee shall cause such Unit to be released and all such liens and security interests to be promptly discharged (except to the extent that the same shall be contested by the Lessee by Permitted Contest).

SECTION 9. Rent. (a) [Intentionally omitted]

(b) Basic Rent; Renewal Rent. (i) Basic Rent. Subject to any adjustment required by paragraph (e) of this Section 9 or by the immediately following sentence, the Lessee hereby agrees to pay to the Lessor, subject to Section 19 of this Lease, on each Payment Date during the Basic Term, Basic Rent for each Unit, payable in semi-annual installments in advance, each in an amount equal to the product of the Lessor's Cost for such Unit multiplied by the percentage listed in Schedule 1 to this Lease, opposite the relevant Payment Date. Each payment of Basic Rent shall be in an amount at least sufficient to pay in full any payment then required to be made on account of principal of, and interest on, the Notes then Outstanding (other than by reason of acceleration of maturity or optional prepayment thereof). It is understood that all payments (other than Excepted Property) to be made by the Lessee under this Lease are subject to the lien of the Indenture and to all the rights of the Indenture Trustee thereunder.

(ii) Renewal Rent. The Lessee hereby agrees to pay to the Lessor renewal rent in advance on each Payment Date during the Renewal Term.

(c) Supplemental Rent. In addition to its obligation to pay Basic Rent hereunder, the Lessee shall pay to the Lessor or such other Person entitled thereto any and all Supplemental Rent (whether provided for herein or in any other Operative Document) as and when the same shall become due and owing, including, without limitation, the following:

(i) The Lessee agrees to pay to the Lessor, on demand, as Supplemental Rent, to the extent permitted by Applicable Law, interest at a rate per annum equal to the Overdue Rate on any part of any installment of

Basic Rent or Supplemental Rent not paid when due for any period for which the same shall be overdue.

(ii) The Lessee agrees that in the event that any Premium shall become payable by the Lessor under the Indenture or the Notes, then on the due date thereof, an amount equal thereto shall be payable by the Lessee as Supplemental Rent.

(d) Manner of Payment; Unconditional Payment.  
All Basic Rent and Supplemental Rent shall be payable by wire transfer of federal or other immediately available funds or by any other means mutually agreeable to Lessee and Lessor at the place where payment is required to be made on or before 11:00 a.m. on the day when each such payment shall be due, provided, that if such date is not a Business Day such payment shall be made on the next succeeding Business Day. Except as specifically provided in this Lease, the Lessee's obligation to pay Basic Rent and Supplemental Rent payable hereunder shall be absolute and unconditional under any and all circumstances and shall not be affected by any circumstances of any character, including, without limitation, (i) any setoff, counterclaim, recoupment, defense or other right which the Lessee may have against the Lessor, the Indenture Trustee, any Participant or anyone else for any reason whatsoever, including, without limitation, any default by the Lessor or any party to the Participation Agreement or any agreement referred to therein in their respective obligations hereunder or thereunder, (ii) any unavailability of any Unit, after its delivery and acceptance by the Lessee hereunder, for any reason, including, without limitation, any lack or invalidity of title or any other defect in the title, condition, design, operation, merchantability or fitness for use of such Unit, (iii) any failure or delay on the part of the Lessor, the Indenture Trustee or any Participant or any other Person, whether with or without fault on its part, in performing or complying with any of the terms of covenants hereunder or any of the other Operative Documents, (iv) any loss or destruction of, or damage to, such Unit or interruption or cessation in the use or possession thereof by the Lessee for any reason whatsoever and of whatever duration, (v) any insolvency, bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding by or against the Lessor, the Indenture Trustee, the Lessee or any Participant or any agreement referred to therein, (vi) any breach of any representation or warranty of, or any act or omission of, the Lessor, the Indenture Trustee or any Participant under this Lease or any of the other Operative

Documents, (vii) any claims as a result of any other business dealings by the Lessor, the Owner Participant Guarantor, the Indenture Trustee, any Participant or the Lessee, (viii) the requisitioning, seizure or other taking of title to or use of any Unit by any government or governmental authority or otherwise whether or not by reason of any act or omission of the Lessor, any Participant, the Owner Participant Guarantor, the Lessee or the Indenture Trustee, or any other deprivation or limitation of use of any Unit in any respect or for any length of time, whether or not resulting from accident and whether or not without fault on the part of the Lessee, (xi) any ineligibility of such Unit for any particular use, whether due to any failure of the Lessor, the Owner Participant Guarantor, any Participant, the Lessee or any other Person to comply with any law or governmental regulation or otherwise, (xii) any legal requirement or (xiii) any other cause, circumstance or happening, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. The Lessee hereby waives, to the extent permitted by Applicable Law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. Except to the extent of any payment in excess of that required to be made hereunder, each payment of Basic Rent and Supplemental Rent made by the Lessee shall be final, and the Lessee will not seek to recover all or any part of such payment from the Indenture Trustee, any Holder of a Note, the Lessor or any Participant for any reason whatsoever.

(e) Adjustments for Loss of Tax Benefits. In the event that a Loss of Tax Benefits occurs (for which the Owner Participant receives indemnification under the Tax Indemnification Agreement), then the Stipulated Loss Value percentages and Termination Value percentages shall be adjusted by the Owner Participant to maintain the Net Return in the manner described in Section 12 of the Tax Indemnification Agreement.

(f) [Intentionally Omitted].

(g) [Intentionally Omitted].

(h) Determination of Adjustments. Any adjustment pursuant to Section 9(e) shall initially be computed by the Owner Participant. The results of such computation by the Owner Participant shall promptly be delivered to the Lessee.

Within 10 Business Days after the receipt of the results of an adjustment, the Lessee may request that the Verifying Accountant verify, after consultation with the Owner Participant and the Lessee, the accuracy of such adjustment, and the Owner Participant and the Lessee hereby agree to provide the Verifying Accountant with all information and materials as shall be reasonably necessary or desirable in connection therewith. If the Verifying Accountant confirms that such adjustment is in accordance with Section 9(e), it shall so certify to the Lessee, and such certification shall be final, binding and conclusive on the Lessee, the Owner Participant and the Lessor. If the Verifying Accountant concludes that such recalculation or adjustment is not in accordance with Section 9(e), it shall so certify to the Lessee and the Owner Participant, and the Owner Participant shall again compute the required adjustment. Such further adjustment shall again be subject to the provisions of this Section 9(h). Any such Verifying Accountant, in connection with the performance of an adjustment or recalculation hereunder, (i) shall not be permitted to review the documents, programs and procedures used to calculate the Owner Participant's Net Return but shall have access to all other relevant documents, programs and procedures of the Owner Participant, (ii) shall execute a confidentiality agreement with respect to the subject matter of its review and (iii) shall return to the Owner Participant any materials of the Owner Participant used by such Verifying Accountant in the course of such verification. The final determination of any recalculation or adjustment hereunder shall be set forth in an amendment to this Lease, executed and delivered by the Lessor and the Lessee and consented to by the Owner Participant; provided, however, that failure to execute and deliver such amendment shall not affect the validity and effectiveness of any such recalculation or adjustment. The reasonable fees of the Verifying Accountant in verifying an adjustment pursuant to this Section 9(h) shall be paid by the Lessee within ten days after demand, except that the Lessor and the Owner Participant shall pay such fees, costs and expenses if such recalculation or adjustment is required to be recomputed because of an error of the Owner Participant resulting in a net present value (calculated at a discount rate equal to 9.60% per annum computed on a semi-annual basis) of the recalculated or adjusted Stipulated Loss Value and Termination Value that is 10 or more basis points higher than the net present value (at such rate) of the Stipulated Loss Value and Termination Value as determined by the Verifying Accountant.

(i) Sufficiency of Rent. Notwithstanding any provision to the contrary contained in this Lease or in any other Operative Document, (i) the amount of each Basic Rent payment payable hereunder shall be at least sufficient to pay, on each Payment Date, any amounts then required to be paid by the Lessor on account of (including mandatory redemption of) the principal of and interest on the Notes on such date and (ii) the amount of Stipulated Loss Value or Termination Value payable hereunder (together with the amount of Basic Rent and Premium, if any, due hereunder on each respective Payment Date for which Stipulated Loss Value or Termination Value is being calculated), before and after giving effect to any adjustments of the percentages relating thereto provided for in this Lease, shall be at least sufficient to pay or redeem in full, as and when due in accordance with the terms thereof, the principal of and all accrued interest on the Notes from time to time outstanding and the Premium, if any. Any Premium payable with respect to the Notes and any interest at the Overdue Rate shall be payable as Supplemental Rent, and the amount of each Supplemental Rent payment payable hereunder shall, if there shall then be a Premium or interest calculated at the Overdue Rate payable on or with respect to the Notes, in any event be at least sufficient to pay, in accordance with the Indenture, all such amounts of Premium and all interest calculated at the Overdue Rate then payable on or with respect to the Notes.

SECTION 10. Insurance. (a) The Lessee shall at all times after the Closing Date, at its own expense, carry and maintain or cause to be carried and maintained (i) all-risk property insurance with respect to each Unit subject to this Lease in an amount not less than the Stipulated Loss Value thereof as of the next preceding Payment Date and (ii) public liability insurance including pollution liability, with respect to third party personal and property damage, such insurance to afford protection to a minimum limit of \$50,000,000 per occurrence and annually per policy year in the aggregate, in each case against such risks and with such insurance companies of recognized responsibility as is consistent with industry practice for companies engaged in a similar business and owning and operating similar properties, and in any event, in amounts not less than and against such risks so as to be no less protective than the insurance, if any, maintained by the Lessee with respect to similar equipment owned or leased by the Lessee, provided that the Lessee may self-insure against such risks by deductible provisions of up to \$500,000 in respect of each event subject to the insurance maintained pursuant to clause

(i) above and of up to \$5,000,000 (\$2,000,000 during any period when the Lessee's debt obligations are not rated at least BBB- by Standard & Poor's or Baa3 by Moody's Investors Service) in respect of each event subject to the insurance maintained pursuant to clause (ii) above. In the event that the Lessee or any subsidiary undertakes in any current or future financing transaction for equipment of similar type, service and use, to provide insurance coverage minimums and deductibles which are more favorable to any financing party than those set forth in this Section 10, the Lessee agrees to maintain at all times such more favorable insurance coverage levels and deductibles on the Units subject to this lease.

(b) All such insurance shall cover the interest of and add as additional insureds the Lessor, in both its individual and fiduciary capacities, each Participant, AT&T Capital Corporation and their respective Affiliates and subsidiaries, American Telephone and Telegraph Company, the Indenture Trustee and the Lessee, as their interests may appear, in the Units and, to the extent permitted by applicable insurance laws, their respective officers, directors, agents and employees. The Lessee shall cause the property insurance on the Units required by clause (i) above to provide that, so long as the lien and security interest of the Indenture shall remain in effect, the proceeds, if any, shall be payable to the Indenture Trustee under a standard mortgage loss payable clause reasonably satisfactory to the Indenture Trustee, and thereafter to the Lessor.

(c) All insurance policies required to be maintained by the Lessee pursuant to this Section 10 shall provide with respect to such additional insureds that (i) in the case of policies of all-risk property insurance, none of their respective interests in such policies shall be invalidated by any act or omission or breach of warranty or condition contained in such policies by the Lessee, any sublessee or assignee, or in the case of any particular additional insured, any other insured; (ii) the same shall not be cancelled or materially modified without at least 30 days' prior written notice (10 days for non-payment of premium in respect of public liability insurance) to the Owner Participant, Lessor and Indenture Trustee; (iii) they shall have no liability for premiums, commissions, calls, assessments or advances with respect to such policies; (iv) such policies (other than excess liability policies) will be primary and all of the policies will be without any right of contribution from any other insurance carried by such

additional insured; (v) the insurers waive any rights of set-off, counterclaim, deduction or subrogation against such additional insured, and the Lessee agrees not to exercise any rights of subrogation of the insurers against such additional insured; and (vi) each public liability insurance policy shall provide that in the event of claim by one insured against another insured covered by the policy, the policy shall cover as if separate policies had been issued to each interest, and shall further provide for payment of claims within a specified time period, and such payment shall not be delayed or otherwise affected by the insurer's subrogation rights or the exercise thereof. In the event the Lessee shall fail to maintain insurance as herein provided or be in default or breach of any term or condition of any insurance policy maintained hereunder, the Lessor or the Owner Participant may at its option provide such insurance or cure any default therein (giving the Lessee prompt notice thereof), in which event the Lessee shall upon demand reimburse the Lessor or the Owner Participant for the cost thereof.

(d) As between Lessor and Lessee it is agreed that all insurance payments received under policies required to be maintained by Lessee pursuant to clause (i) of Section 10(a), exclusive of any payments received in excess of the Stipulated Loss Value for any Unit from such policies, as the result of the occurrence of an Event of Loss with respect to any Units will be applied as follows: (x) if such payments are received with respect to a Unit that has been or is being replaced by Lessee as contemplated by Section 11(c), such payments shall be paid over to, or retained by, Lessor, and upon completion of such replacement be paid over to, or retained by, Lessee; and (y) if such payments are received with respect to a Unit that has not been and will not be replaced as contemplated by Section 11(c), so much of such payments remaining, after reimbursement of Lessor for costs and expenses, as shall not exceed the Stipulated Loss Value required to be paid by Lessee pursuant to Section 11(c) shall be applied in reduction of Lessee's obligation to pay such Stipulated Loss Value, if not already paid by Lessee, and the balance, if any, of such payment remaining thereafter will be paid over to, or retained by, Lessee.

As between Lessor and Lessee the insurance payment of any property damage or loss in excess of the Stipulated Loss Value of the Units shall be paid to Lessee. As between Lessor and Lessee the insurance payments of any property damage or loss not constituting an Event of Loss with re-



spect to the Units will be applied in payment (or to reimburse Lessee) for repairs or for replacement property in accordance with the terms of Section 11(c), and any balance remaining after compliance therewith with respect to such loss shall be paid to Lessee. Any amount referred to in the preceding sentence or in clause (x) or (y) of this Section 10(d) which is payable to Lessee shall not be paid to Lessee or, if it has been previously paid directly to Lessee, shall not be retained by Lessee, if at the time of such payment any Lease Event of Default or Lease Default shall have occurred and be continuing, but shall be paid to and held by Lessor, as security for the obligations of Lessee under this Lease, and at such time as there shall not be continuing any such Lease Event of Default or Lease Default, such amount shall be paid to Lessee.

(e) The Lessee agrees that it will satisfy all obligations under any insurance required hereunder to keep such insurance in full force and effect and it will not do any act or voluntarily suffer or permit any act to be done whereby any insurance required to be maintained hereunder shall or may be suspended or impaired and will not suffer or permit any Unit to be used in a manner not permitted under the insurance policies, if any, maintained hereunder without first covering such Unit for such use.

(f) Any Participant, the Indenture Trustee or the Lessor may at its own expense provide insurance on or with respect to the Units or the operation thereof unless such insurance would conflict with or otherwise limit any insurance maintained by the Lessee (whether or not pursuant to this Section 10); provided, however, that any insurance so maintained by the Indenture Trustee, the Lessor or any Participant shall provide by its terms that the insurer shall have no rights of subrogation against the Lessee with respect to claims thereunder.

(g) If requested by the Lessor, the Owner Participant or the Indenture Trustee, the Lessee will promptly arrange to be delivered to the Lessor and the Indenture Trustee copies of all applicable provisions of any such insurance carried on the Units. The Lessee will, so long as the Lease remains in effect, furnish to the Lessor, Owner Participant, Loan Participants and the Indenture Trustee evidence of renewal of the insurance policies required pursuant to this Section 10 promptly after the renewal thereof and in any event on an annual basis, evidence of insurance policies maintained under this Section

10, and, within 15 days of the renewal of the public liability insurance policy, a report signed by a firm of insurance brokers, not affiliated with the Lessee, appointed by the Lessee and reasonably satisfactory to the Lessor, setting forth the insurance carried with respect to the Units (including public liability insurance) and the status of premium payment for each policy, provided that all information contained in such report shall be held confidential by the Lessor, Owner Participant, Loan Participants and the Indenture Trustee, and shall not be furnished or disclosed by them to anyone except their respective Affiliates, counsel, its advisors and auditors or bona fide prospective transferees of the interest of such Participant in the Units and their respective agents and representatives (provided that any recipient of such information shall agree for the benefit of the Lessee to hold all such information similarly confidential) or as may be required by Applicable Law or court order.

SECTION 11. Loss, Requisition or Seizure. (a) Requisition. A taking of any Unit for use by any governmental entity shall not terminate this Lease with respect to such Unit, but the Lessee shall remain liable for all its obligations hereunder and under the other Operative Documents with respect to such Unit, including, without limitation, its liability for payment of Rent, unless and until such taking becomes an Event of Loss hereunder, at which time the provisions of Section 11(b) shall apply. So long as such taking shall not have become an Event of Loss hereunder, all payments received by the Lessor or the Lessee for use of such Unit as a result of such taking during the Lease Term shall be paid over to, or retained by, the Lessee except if a Lease Event of Default or Lease Default shall have occurred and be continuing, in which event such payments shall be payable to the Lessor, or to whomever shall be entitled to receive the same subject to an accounting between the Lessor and the Lessee at the termination of this Lease. Provided no Lease Default or Lease Event of Default shall have occurred and be continuing, after an Event of Loss with respect to a Unit, all payments received by the Lessor or the Lessee for use of such Unit under this paragraph (a) shall be paid over to, or retained by, the Lessee and applied to the payment of Stipulated Loss Value, and after such payment, any amounts remaining shall be paid to the Lessor; otherwise all such payments shall be retained by or paid over to the Lessor or to whomever shall be entitled to receive the same.

(b) Event of Loss. The Lessee shall provide the Lessor and the Indenture Trustee with prompt notice of any Event of Loss. Subject to Section 10(c), on each Payment Date (but in the case of an Event of Loss which occurs within 90 days of the expiration of the Lease Term and for which the Lessee obtains knowledge of the occurrence thereof, no later than 90 days after the final Payment Date), the Lessee shall pay to the Lessor, or to whomever shall be entitled to receive the same, (x) the Stipulated Loss Value for any Unit in respect of which a Responsible Officer of the Lessee shall then have actual knowledge of the occurrence of an Event of Loss for which Stipulated Loss Value has not theretofore been paid, computed as of such Payment Date (or, in the case of an Event of Loss with respect to any Unit for which Stipulated Loss Value is being paid after the final Payment Date paid during the Lease Term computed as of the final Payment Date), plus (y) if the date of the payment of Stipulated Loss Value shall be after the final Payment Date, an amount equal to interest at a rate per annum equal to the Prime Rate computed for the period from the final Payment Date to the date such Stipulated Loss Value shall be paid, plus (z) the Basic Rent payable on such Payment Date (if and to the extent Basic Rent is then being paid in arrears) and all other unpaid Rent for such Unit accrued to the date such payment of Stipulated Loss Value shall be due; provided, however, that the Lessee agrees, on behalf of the Lessor, to give not less than 15 nor more than 35 days prior to the relevant Payment Date, a notice of redemption to the Indenture Trustee with respect to that portion of the Notes Outstanding to be redeemed pursuant to Section 401(a) of the Indenture in connection with such termination. After the payment in full of such Stipulated Loss Value and such other amounts, the Lessee's obligation to pay further Basic Rent with respect to such Unit shall terminate.

All payments received by the Lessor or the Lessee from any governmental authority or otherwise as compensation for an Event of Loss with respect to any Unit shall be applied in reduction of the Lessee's obligation to pay the Stipulated Loss Value of such Unit, if not already paid by the Lessee or if already paid by the Lessee, shall be applied to reimburse the Lessee for its payment of Stipulated Loss Value, and the balance, if any, of such payments shall be shared between the Lessee and the Lessor as their interests may appear. In the event that the Lessee shall make payment as provided above, including payment by application of compensation or insurance proceeds and shall pay all other Rent then owing under this Lease with respect to a

Unit subject to an Event of Loss, this Lease shall terminate with respect to such Unit and the Lessee or its designee (i) shall be subrogated to all rights that the Lessor shall have with respect to such Unit, (ii) shall, subject to the Lessee's obtaining any governmental consents required, receive assignments and bills of sale from the Lessor (in such form as the Lessee or such designee shall reasonably require) of any or all such rights, together with all the Lessor's right, title and interest in and to such Unit, free and clear of any Owner Encumbrances, but otherwise without any representation, recourse or warranty of any character on the part of the Lessor, and (iii) shall have the right to abandon such Unit to underwriters on behalf of the Lessor as well as itself. In such case, the Lessor shall, at the Lessee's expense, execute or cause to be executed such documents and take such other action as the Lessor shall require to effect the surrender to the insurance underwriters of such Unit. The Lease Term shall terminate with respect to such Unit upon payment of Stipulated Loss Value and all Rent therefor then owing. The foregoing provisions of this Section 11(b) to the contrary notwithstanding, upon the occurrence in respect of any Unit of an event described in clause (iv) of the definition of "Event of Loss", the Lessor may, by notice in writing given to the Lessee elect to retain such Unit "as is" "where is", in which event the Lessee shall be excused from any obligation to pay Stipulated Loss Value in respect of such Unit and the Lessor shall (i) pay, or provide for the payment of, an aggregate principal amount of the Notes Outstanding (and Premium, if any) equal to the product of (A) the aggregate principal amount of Notes Outstanding on such date after the application by the Indenture Trustee of Basic Rent to the payment due on such date and (B) a fraction the numerator of which is the aggregate Lessor's Cost for such Unit and the denominator of which is the aggregate Lessor's Cost for all of the Units then subject to this Lease, together with the Premium (if any) and accrued interest (if and to the extent Basic Rent is then being paid in arrears) thereon to such Payment Date, and (ii) deliver to the Lessee a release of all obligations of the Lessee to pay Basic Rent with respect to such Unit on any and all Payment Dates accruing on (if Basic Rent has been paid in advance) and after (but not on, if Basic Rent is to be paid in arrears, or before) such Payment Date, as well as of the obligation of the Lessee to pay Stipulated Loss Value in respect thereof.

(c) Replacement. In the case of any Event of Loss occurring before March 1, 1996, and provided that no

Lease Event of Default or Lease Default shall have occurred and be continuing, in lieu of payment of all or a portion of the Stipulated Loss Value for any Unit due and owing as provided in subsection (b) above, the Lessee shall, on or prior to the date on which such Stipulated Loss Value would have otherwise been due, convey or cause to be conveyed to the Lessor, as replacement for any such Unit with respect to which an Event of Loss occurred, title to a Replacement Unit free and clear of all liens other than Permitted Encumbrances and having a fair market value, residual value and utility and remaining useful life at least equal to, and being in as good operating condition as, in each case, as determined by the Lessor in its reasonable judgment, such Unit with respect to which an Event of Loss occurred assuming such Unit was in the condition and repair required by the terms hereof immediately prior to the occurrence of such Event of Loss; provided, however that if the Lessee shall be unable, notwithstanding its reasonable best efforts, to obtain such a Unit for replacement meeting the standards set forth in this sentence, and shall have furnished to each of the Owner Trustee and the Indenture Trustee an Officer's Certificate to such effect, then the Lessee shall not so replace such Unit but shall make the payment in respect thereof required by subsection (b) above. Prior to or at the time of any such conveyance, the Lessee, at its own expense, will furnish the Lessor, the Indenture Trustee and each Participant with the following documents which shall have been duly authorized, executed and delivered by the respective parties thereto and shall be in full force and effect on the date of such conveyance: (i) a bill of sale, in form and substance satisfactory to Lessor, with respect to such Replacement Unit and (ii) a Lease and Indenture Supplement substantially in the form of Exhibit A hereto covering such Replacement Unit, together with such evidence of compliance with the provisions of Sections 10 and 22 (including a confirming legal opinion, which may be rendered by internal counsel to the Lessee) hereof as the Lessor or the Indenture Trustee may reasonably request. Upon full compliance by the Lessee with the terms of this subsection (c), the Lessor will transfer to the Lessee, without recourse or warranty (except as to the Owner Encumbrances) and subject to a disclaimer satisfactory to the Lessor and the Indenture Trustee of all liabilities, including tort and contract with respect to such Unit, all of the Lessor's right, title and interest, if any, in and to such replaced Unit with respect to which an Event of Loss occurred. For all purposes hereof, each such Replacement Unit shall, after such conveyance, be deemed part of the property leased hereunder and shall be deemed a "Unit" as

defined herein. No Event of Loss with respect to a Unit under the circumstances contemplated by the terms of this Section 11(c) shall result in any reduction in Basic Rent.

SECTION 12. Termination for Obsolescence or Surplusage. (a) So long as no Lease Default (other than a Lease Default arising from a breach of a covenant (other than the covenant to pay Rent) or representation relating solely to the Units which have become economically obsolete or surplus) or Lease Event of Default has occurred and is continuing, at any time after August 1, 1996 notwithstanding any provision herein contained to the contrary, in the event that any of the Units shall have become economically obsolete or surplus to the Lessee's requirements, as certified by a Responsible Officer of the Lessee, the Lessee shall have the right at its option, on at least 180 days' prior written notice evidencing the Lessee's determination (the "Notice of Termination") to the Lessor and the Indenture Trustee, to terminate this Lease with respect to such Units, on any Payment Date (for the purpose of this Section 12(a) called the "Termination Date") specified in such Notice of Termination; provided, however, that the Lessee agrees, on behalf of the Lessor, to give a notice of redemption to the Indenture Trustee with respect to that portion of the Notes Outstanding to be redeemed pursuant to Section 401(b) of the Indenture in connection with such termination; and provided further, that (a) on the Termination Date such Units shall be in the same condition and at the same location as if being returned, pursuant to Section 2(b) hereof, free and clear of all liens, charges, security interests and encumbrances (except as permitted by Section 2(c)), and (b) such Termination Date shall occur on a Payment Date at least 60 days after the Lessee, on behalf of the Lessor, gives the notice to the Indenture Trustee referred to in the first proviso to this sentence to redeem an aggregate principal amount of Notes Outstanding (together with the Premium, if any, payable with respect thereto) equal to the product of (i) the aggregate principal amount of Notes Outstanding on such date after application by the Indenture Trustee of Basic Rent to the payment due on such date and (ii) a fraction the numerator of which is the Lessor's Cost for the Units so being designated as obsolete or surplus and the denominator of which is the aggregate Lessor's Cost for all of the Units then subject to this Lease. The Lessee agrees to pay the Owner Participant's and any Holder's reasonable administrative costs in connection with any single exercise of the Lessee's option pursuant to this Section 12(a) in respect of Units the Lessor's Cost of which, in the aggregate, shall not exceed \$1,000,000.

(b) During the period from the giving of such notice until the Termination Date, the Lessee, as agent for the Lessor, shall use its best efforts to obtain bids for the purchase of such Units, and the Lessee shall certify to the Lessor the amount of such bid and the name and address of the party submitting such bid. Subject to the condition of concurrent payment by the Lessee of any sum required to be paid in the next following sentence, on the Termination Date (or such later date as the Lessor and the Lessee may mutually agree) the Lessor shall sell such Units for cash to the bidder who shall have submitted the highest bid prior to the Termination Date, provided, however, that the purchaser of such Units shall be a Person other than the Lessee, any Affiliate of the Lessee or any successor or assign of the Lessee. The sales price (net of costs and expenses of the Lessor and of the Owner Participant) realized at such sale shall be paid to the Lessor or to whomever shall be entitled to receive the same, and, in addition, on the Termination Date the Lessee shall pay to the Lessor, or to whomever shall be entitled to receive the same, the amount, if any, by which (i) the Termination Value for such Units, computed as of such Payment Date, exceeds (ii) the sales price of such Units net of costs and expenses referred to above (or, if such sale does not occur on or prior to the Termination Date, the Lessee shall pay on the Termination Date to the Lessor, or to whomever shall be entitled to receive the same, the amount specified in clause (i) above); provided, however, that any sale proceeds (net of the costs and expenses of the Lessor and of the Owner Participant) received by the Lessor after the Termination Date shall be applied, first, to reimburse the Lessee for the amount specified in clause (i) above and, second, the balance (if any) shall be paid to the Lessor. In addition, the Lessee shall pay to the Lessor or to whomever shall be entitled to receive the same, the amount of all Supplemental Rent then due in respect of such Units. If no sale shall occur on the date scheduled therefor as above provided, this Lease will continue in full force and effect. In the event of termination of this Lease pursuant to this Section 12 and the receipt by the Lessor, or by whomever shall be entitled to receive the same, of all amounts above described as payable, the obligation of the Lessee to pay Basic Rent in respect of such Units on each Payment Date shall terminate. The Lessor shall be under no duty to solicit bids (but shall have the right to do so), to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this Section 12 other than, upon payment by the Lessee of all sums due under this Section 12, to transfer or to

cause to be transferred to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided all the Lessor's right, title and interest in and to such Units. Any sale pursuant to this Section 12 shall be free and clear of the Lessee's rights to such Units, and any Owner Encumbrances but otherwise shall be made without any representation, recourse or warranty whatsoever on the part of the Lessor except that the Lessor shall warrant to the purchaser that such Units are free and clear of all Owner Encumbrances.

(c) The foregoing provisions of Section 12(b) to the contrary notwithstanding, the Lessor may, by notice in writing given to the Lessee within 90 days prior to the termination of the Lease pursuant to this Section, elect to retain such Units "as is" "where is", in which event the Lessee shall discontinue its efforts to sell the Units and the Lessor shall (i) pay, or provide for the payment of, an aggregate principal amount of the Notes Outstanding equal to the product of (A) the aggregate principal amount of Notes Outstanding on such date after the application by the Indenture Trustee of Basic Rent (if and to the extent Basic Rent is then being paid in arrears) to the payment due on such date and (B) a fraction the numerator of which is the aggregate Lessor's Cost for such Units so being designated as obsolete or surplus and the denominator of which is the aggregate Lessor's Cost for all of the Units then subject to this Lease, together with the Premium (if any) and accrued interest (if and to the extent Basic Rent is then being paid in arrears) thereon to the Termination Date, and (ii) deliver to the Lessee a release of all obligations of the Lessee to pay Basic Rent with respect to such Unit on any and all Payment Dates accruing on (if Basic Rent has been paid in advance) and after (but not on, if Basic Rent is to be paid in arrears, or before) the Termination Date, as well as of the obligation of the Lessee to pay Termination Value in respect thereof.

(d) Not less than 45 days prior to the Termination Date, the Lessee shall have the right to revoke the Notice of Termination if (i) no bid has been received that equals or exceeds the Termination Value for such Units and (ii) the Lessor has not elected to retain the Units pursuant to paragraph (c).

SECTION 13. Assignment and Sublease. (a) Assignment. So long as no Lease Event of Default shall have occurred and be continuing, the Lessee may assign all of its rights and obligations under this Lease and the other Oper-



ative Documents without the prior consent of the Lessor and the Indenture Trustee to any Affiliate of the Lessee, if the Lessee remains liable for all its obligations under this Lease and the other Operative Documents to which it is a party to the same extent as if such assignment to such Affiliate had not been made. Any assignment to any other Person shall require the prior written consent of the Lessor and the Indenture Trustee.

(b) Sublease. So long as no Lease Event of Default or Lease Default shall have occurred and be continuing, the Lessee shall have the right to enter into a sublease for any Unit with any subsidiary or parent corporation of the Lessee provided that each such sublease shall be expressly subject and subordinate to the terms of this Lease and the Lessee shall remain liable for all its obligations under this Lease and the other Operative Documents to which it is a party to the same extent as if such sublease were not in effect. Any sublease to any other Person shall require the prior written consent of the Lessor, the Owner Participant and the Indenture Trustee, which shall not be unreasonably withheld (it being acknowledged that it shall not be unreasonable for such consent to be withheld if the Lessee shall not promptly furnish such parties information as they reasonably request as to the prospective sublessee), it being agreed that Lessor, the Owner Participant and the Indenture Trustee shall be deemed to have so consented if 10 Business Days shall have passed from the time of the Lessee's request for such consent without the Lessor, the Owner Participant or the Indenture Trustee furnishing its objection thereto. No such sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

SECTION 14. Lease Events of Default. Each of the following events shall constitute a "Lease Event of Default" (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body or otherwise):

(a) the Lessee shall fail to make any payment of Basic Rent, Stipulated Loss Value, Termination Value or Supplemental Rent (to the extent such Supplemental Rent constitutes payment of Premium on the Notes) on the date the same shall become due and such failure shall

be continuing at the end of the 5th Business Day after such payment shall become due; or

(b) the Lessee shall fail to make any payment of Supplemental Rent other than Supplemental Rent which constitutes payment of Premium on the Notes (or any other payment required hereunder other than Basic Rent and Supplemental Rent which constitutes payment of Premium on the Notes) before the end of the 5th Business Day after the Lessee (and, if such demand is being made by the Indenture Trustee, the Lessor) shall have received written demand for such payment from the Lessor or the Indenture Trustee; or

(c) the Lessee shall fail to perform or observe in a material respect any other covenant, condition or agreement to be performed or observed by it hereunder or under any other Operative Document to which it is a party (except for the Tax Indemnification Agreement) and the Lessee shall not have diligently commenced and be continuing to cure such failure (in the case of a cure that cannot be effected by the payment of money and where such failure is not likely in the Lessor's judgment to result in criminal penalties or civil penalties for the Lessor or the Owner Participant and in the Lessor's judgment is not likely to impose a lien or pose a material risk of foreclosure, forfeiture, loss, or loss of use, or sale of, or have any other material adverse effect on the aggregate value of the Units then being leased hereunder or the title, property or rights therein) or shall not have cured such failure (in the case of a cure that can be effected by the payment of money or which is likely in the Lessor's judgment to result in criminal penalties or civil penalties for the Lessor or the Owner Participant or to impose a lien or impose a material risk of foreclosure, forfeiture, loss, or loss of use, or sale of, or have any other material adverse effect on the aggregate value of the Units then being leased hereunder) on or prior to the 30th day after the Lessee (and, if such notice is being given by the Indenture Trustee, the Lessor) shall have received notice of such failure from the Lessor or from the Indenture Trustee; provided, that the failure by Lessee to cure such a failure within two months after receiving such notice shall constitute an immediate Lease Event of Default and provided, further, however that in respect of any failure to perform or observe any covenant, condition or agreement under Sections 10 or 13 hereof or Section

25 of the Participation Agreement, no such cure or grace period shall apply; or

(d) any representation or warranty made by the Lessee herein or in any Operative Document (other than the Tax Indemnification Agreement) or any document or certificate (other than representations or warranties relating exclusively to conclusions contained in the Appraisal, unless such representations or warranties relate solely to the statement of the fair market value of the Units on the Closing Date) furnished by it to the Lessor, the Indenture Trustee or any Participant shall prove at any time to be incorrect as of the date made in any material respect; or

(e) the Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency law (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee in any such proceeding; or the Lessee shall by voluntary petition, answer or consent, seek relief under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors, or the Lessee shall make an assignment for the benefit of creditors, or the Lessee shall fail to pay its debts as they become due or the Lessee shall take any action in furtherance of any such action; or

(f) a receiver, trustee, liquidator or custodian of the Lessee or of a substantial part of its property shall be appointed by court order and such order shall remain in effect for more than 60 days; or the Lessee shall be adjudicated bankrupt or insolvent or any of its properties shall be sequestered by court order and such order shall remain in effect for more than 60 days; or a petition shall be filed against the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and shall not be dismissed within 60 days after such filing; or

(g) a "Lease Event of Default" as defined in either of the two other lease agreements of even date

herewith between the Lessor or the owner trustee of any other trust whose beneficiary is the Owner Participant, as lessor, and Lessee, as lessee and relating to equipment other than the "Units" subject to this Lease.

SECTION 15. Action Following a Lease Event of Default. Upon the occurrence of a Lease Event of Default and at any time thereafter so long as the same shall be continuing, the Lessor may, at its option, declare this Lease to be in default (except that no such declaration shall be required in the case of a Lease Event of Default pursuant to paragraph (e) or (f) of Section 14); and at any time thereafter the Lessor may do, and the Lessee shall comply with, one or more of the following, as the Lessor in its sole discretion shall so elect, to the extent permitted by and subject to compliance with, any mandatory requirements of Applicable Law then in effect:

(a) Redelivery and Retaking. Upon written demand, the Lessor may cause the Lessee, at the Lessee's expense, to, and the Lessee hereby agrees that it will, promptly redeliver the Units, or cause the Units to be redelivered, to the Lessor with all reasonable dispatch and in the same manner and in the same condition as if the Units were being redelivered in accordance with all the provisions of Sections 2(b) and 2(c) and all obligations of the Lessee under said Sections shall apply to such redelivery; or the Lessor or its agent, at the Lessor's option, without further notice, may, but shall be under no obligation to, retake the Units wherever found, and irrespective of whether the Lessee, any sublessee, assignee or any other Person is in possession of the Units or any of them, all without prior demand and without legal process, and for that purpose the Lessor or its agent may enter upon any premises where any such Unit is and may take possession thereof, without the Lessor or its agent incurring any liability by reason of such retaking, whether for the restoration of damage to property caused by such retaking or for damages of any kind to any Person for or with respect to any cargo carried or to be carried by such Unit or for any other reason.

(b) Liquidated Damages. Whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any options, rights or remedies under paragraph (a) or (c) of this Section 15, the Lessor may, by notice to the Lessee specifying a Payment Date

which is not earlier than 10 days after the date of such notice, demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor, on such Payment Date, as liquidated damages for loss of a bargain and not as a penalty, and in lieu of Basic Rent for any Unit due after such Payment Date, all unpaid Basic Rent for such Unit payable on each Payment Date occurring on (if Basic Rent is then being paid in arrears) or prior to such Payment Date, plus any Supplemental Rent then due with respect therefor, plus whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the Overdue Rate for the period from the Payment Date specified in such notice to the date of actual payment):

(i) an amount equal to the excess, if any, of the Stipulated Loss Value of such Unit computed as of the Payment Date specified in such notice, over the Fair Market Rental Value thereof, determined by an Appraiser selected by the Lessor, for the remainder of the Lease Term applicable to such Unit after discounting such Fair Market Rental Value semi-annually to present worth as of such Payment Date at the Overdue Rate; or

(ii) an amount equal to the excess, if any, of the Stipulated Loss Value of such Unit computed as of the Payment Date specified in such notice, over the Fair Market Sale Value thereof, determined by an Appraiser selected by the Lessor, as of such Payment Date;

provided, however, that if such Unit cannot be repossessed, the Fair Market Rental Value and the Fair Market Sale Value of such Unit for purposes of this Section 15(b) shall be deemed to be equal to zero; and provided further, that if the Lessor shall have sold or leased a Unit under paragraph (c) of this Section 15, the proceeds (net of costs and expenses) from such sale or such rental shall be deemed the Fair Market Sale Value or the Fair Market Rental Value thereof.

(c) Sale; Use. The Lessor or its agent, on reasonable notice to the Lessee, may sell any Unit at a public or private sale, by such advertisement or publication as the Lessor may determine, or otherwise may dispose of, hold, use, operate, lease (whether for a period greater or less than the balance of what would

have been the Lease Term in the absence of the termination of the Lessee's rights to such Unit) to others or keep idle such Unit, in a commercially reasonable manner and on such terms and conditions and at such place or places as Lessor may determine and all free and clear of any rights of the Lessee and of any claim of the Lessee in equity, at law or by statute, whether for loss or damage or otherwise, and without any duty to account to the Lessee.

(d) Other Remedies. The Lessor may terminate this Lease and/or may exercise any other right or remedy, not inconsistent with the foregoing, that may be available to it under Applicable Law in equity or proceed by appropriate court action to enforce the terms of this Lease or to recover damages for the breach hereof.

In addition, the Lessee shall be liable, on an After-Tax Basis, for any and all Supplemental Rent payable hereunder before, during or after the exercise of any of the foregoing remedies, which Supplemental Rent shall include all reasonable legal fees and other costs and expenses incurred by the Lessor, any Participant and the Indenture Trustee by reason of the occurrence of any Lease Event of Default or by reason of the exercise by the Lessor, any Participant or the Indenture Trustee of any remedy hereunder, including, without limitation, any costs and expenses incurred by any Participant, the Lessor or the Indenture Trustee in connection with any retaking of any Unit or, upon the redelivery or retaking of such Unit in accordance with this Section 15, the placing of such Unit in the condition required by the terms of Sections 2(c) and 5. Except as specifically provided herein, no remedy referred to in this Section 15 is intended to be exclusive, but each shall be cumulative and is in addition to, and may be exercised concurrently with, any other remedy which is referred to in this Section 15 or which may otherwise be available at law, or in equity; provided, however, that liquidated damages having been agreed to by the parties hereto pursuant to paragraph (b) above, the Lessor shall not be entitled to recover from the Lessee as damages upon the occurrence of one or more Lease Events of Default an amount in excess of such liquidated damages plus any other Rent owing pursuant to the terms of this Lease. To the extent not required to satisfy any Notes and other amounts then payable under the Indenture, there shall be deducted from the aggregate amount so recoverable by the Lessor the net balance, if any, remaining of any moneys held by the Lessor which would have

been required by the terms hereof or any other Operative Agreement to have been paid to the Lessee but for the occurrence of a Lease Event of Default. To the extent permitted by Applicable Law, the rights of the Lessor and the obligations of the Lessee under this Section 15 shall be effective and enforceable regardless of the pendency of any proceeding which has or might have the effect of preventing the Lessor and the Lessee from complying with the terms of this Lease. No waiver by the Lessor of any Lease Default or Lease Event of Default shall in any way be, or be construed to be, a waiver of any other Lease Default or Lease Event of Default.

SECTION 16. Notices. All notices, demands, declarations and other communications required under the terms and provisions hereof shall mean written or telegraphic notice or notice by telephone promptly confirmed in writing, and shall be addressed (i) if to the Lessee, at its address at 180 Maiden Lane, New York, N.Y. 10038, Telecopy: (212) 510-1990, Attention: Treasurer with a copy to such address, Attention: General Counsel, Telecopy: (212) 510-1908; (ii) if to the Lessor at its address at 777 Main Street, Hartford, Connecticut 06115, Attention: Corporate Trust Administration, Telecopy: (203) 240-7920, with a copy to the Owner Participant at its address specified in the Participation Agreement; (iii) if to the Indenture Trustee, at its address at 750 Main Street, Hartford, Connecticut 06103, Attention: Corporate Trust Department, Telecopy: (203) 244-1899, (iv) if to any Participant, at its respective address specified in the Participation Agreement, or (v) if to any of the foregoing, at such other address as such Person may from time to time designate in writing to the other Persons referred to in this Section 16. Notice shall be effective on receipt.

SECTION 17. [intentionally omitted]

SECTION 18. Successor Banks and Trustees. The Lessee agrees that in the case of the appointment of any successor trustee pursuant to the terms of the Trust Agreement or the Indenture, such successor trustee shall, upon written notice by such successor trustee to the Lessee, succeed to all the respective rights, powers and title of CNB and the Lessor hereunder or to all the rights and powers of the Indenture Trustee hereunder, as the case may be, and shall be deemed to be the owner or mortgagee, respectively, of the Units for all purposes hereof, without the necessity of any consent or approval by the Lessee and without in any way altering the terms of this Lease or the Lessee's obligations hereunder. One such appointment and designation

of a successor trustee shall not exhaust the right to appoint and designate further successor trustees pursuant to the Trust Agreement or the Indenture, but such right may be exercised repeatedly as long as this Lease shall be in effect. The trustee or any successor trustee from time to time serving thereunder may, but shall not be obligated to, appoint one or more of its officers as attorney-in-fact for such trustee or such successor trustee, as the case may be, to execute any and all notices, consents and approvals or other documents necessary or desirable to be executed in connection with this Lease or with the Units.

SECTION 19. Security for Lessor's Obligations under the Indenture. In order to secure the Obligations of Lessor under the Indenture, the Indenture provides for the assignment by the Lessor to the Indenture Trustee of this Lease and for the creation of a security interest in favor of the Indenture Trustee in the Units all as more specifically provided in the Indenture. To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction) no security interest in this Lease may be created through the transfer or possession of any counterpart other than the original counterpart of this Lease, which shall be identified as the counterpart containing the receipt, therefor, executed by the Indenture Trustee on the signature page thereof. The Lessee hereby consents to the assignment of all the Lessor's right, title and interest in and into this Lease, subject to Excepted Property and Excepted Rights as provided in the Indenture, to the Indenture Trustee pursuant to terms of the Indenture. The Lessee hereby acknowledges receipt of an executed counterpart of the Indenture and agrees that such counterpart constitutes adequate notice of all matters contained therein. The Lessee agrees to make all payments of Basic Rent, Stipulated Loss Value and Termination Value and any Premium due hereunder (other than Excluded Property) to the Indenture Trustee c/o the Indenture Trustee Guarantor at its account set forth in Schedule 2 to the Participation Agreement, until Lessee shall receive notice that the Indenture shall have been satisfied and discharged. The Indenture Trustee shall not be obligated to perform any duty, covenant or condition required to be performed by the Lessor under any of the terms hereof, but on the contrary, the Lessee and the Lessor each acknowledge and agree that notwithstanding any such assignment each and all of such duties, covenants or conditions required to be performed by the Lessor shall survive any such assignment and shall be and remain the sole liability of the Lessor. Without limit-



ing the foregoing, the Lessee further acknowledges and agrees that (i) the rights of the Indenture Trustee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, set-off, counter-claim or recoupment whatsoever whether by reason or failure of or defect in the Lessor's title or the failure of the Lessor to afford the right of quiet enjoyment to the Lessee, or any interruption from whatsoever cause in the use, operation or possession of the Units or any part thereof, or any damage to or loss or destruction of the Units or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other Person or for any cause whatsoever, it being the intent hereof that the Lessee shall be unconditionally and absolutely obligated to pay all of the Rent and other sums which are the subject matter of the assignment, and (ii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, the Lessor. Unless and until the Lessee shall have received written notice from the Indenture Trustee that the lien of the Indenture has been released, except as otherwise provided in the Indenture, (i) no amendment or modification of, or waiver by or consent of the Lessor in respect of, any of the provisions of this Lease shall be effective unless the Indenture Trustee shall have joined in such amendment, modification, waiver or consent or shall have given its prior written consent thereto, and (ii) except as otherwise provided in the Indenture, the Indenture Trustee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the Indenture Trustee) which by the terms of this Lease or by Applicable Law are permitted or provided to be exercised by the Lessor. The provisions of this Lease that require or permit action by, the payment of any moneys to, the consent or approval of, the furnishing of any instrument or information to, or the performance of any other obligation to, the Indenture Trustee shall not be effective, and the Sections hereof containing such provisions shall be read as though there were no such requirements or provisions and all moneys otherwise payable to the Indenture Trustee hereunder shall be paid to the Lessor after the Indenture Trustee shall have given the Lessee and the Lessor written notice of the satisfaction and discharge of the Indenture. Notwithstanding anything contained in this Section 19 to the contrary, the Lessor shall be fully released from any and all of the obligations hereunder and under any of the other Operative Documents in the event that the Indenture Trustee shall foreclose on its

liens or security interest in the Lease or in the Units or otherwise succeed to the position of Lessor.

SECTION 20. Confirmation of Warranty Assignment. The Lessee and the Lessor hereby confirm the assignment by the Lessee to the Lessor of the Lessee's rights and remedies against each of the Manufacturers as provided in Section 14(c) of the Participation Agreement.

SECTION 21. Lessor's Right to Perform for the Lessee. If the Lessee fails to make any payment of Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, the Lessor may, on behalf of the Lessee and upon notice to the Lessee, itself or through its agent make such payment or perform such agreement but such payment shall not be a cure in respect of any Lease Event of Default which has occurred as a result of the Lessee's failure to pay such Rent or to perform or comply with such agreement, as the case may be. The amount of any such payment and the amount of the reasonable expenses of the Lessor incurred in connection with such payment or performance, together with interest thereon, to the extent permitted by Applicable Law, at the Overdue Rate, shall be deemed Supplemental Rent, payable by the Lessee upon demand. This Section 21 is not, however, intended in any way as between the Owner Participant and the Lessor, on the one hand, and the Indenture Trustee and the Loan Participants, on the other hand, to expand or otherwise vary the cure rights of the Owner Participant and the Lessor set forth in Sections 601 and 603 of the Indenture, or the limitations on exercise thereof set forth.

SECTION 22. Filings. Prior to the delivery and acceptance of any Unit (including any Replacement Unit), the Lessee will, at its sole expense, (i) if any of the Units are railroad cars, locomotives or other rolling stock intended for a use related to interstate commerce, cause this Lease, the Indenture and the Lease and Indenture Supplement to be duly filed and recorded with the ICC in accordance with 49 U.S.C. § 11303 of the Interstate Commerce Act and with the Registrar General of Canada in accordance with the Canadian Railway Act not later than 21 days after the execution thereof and (ii) in any event, cause financing statements under the Uniform Commercial Code to be filed against the Owner Trustee and the Lessee in respect of the security interests created by the Indenture and the title of the Lessor in the Units in all places reasonably specified by the Lessor or the Loan Participants as necessary or desirable to perfect their respective interests. The Lessee

will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments reasonably requested by the Lessor or the Indenture Trustee as its assignee under the Indenture for the purpose of protecting the Lessor's title to, or such assignee's security interest in, any Unit, and in connection with any such action, will deliver to the Lessor and such assignee proof of such filings. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments.

SECTION 23. Miscellaneous. (a) Amendments. The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the party or parties to be charged.

(b) Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(c) Currency. All amounts and moneys referred to in this Lease shall be construed to mean money which at the time is lawful money of the United States of America.

(d) Liabilities of Lessor. CNB is entering into this Lease solely in its capacity as Owner Trustee under the Trust Agreement, and in no case whatsoever shall CNB (or any entity acting as successor Owner Trustee under the Trust Agreement) or the Owner Participant be personally liable on, or for any loss in respect of, any of the statements, representations, warranties, agreements or obligations of the Lessor hereunder, as to all of which the parties hereto agree to look solely to the Trust created by the Trust Agreement.

(e) Descriptive Headings. The descriptive headings of the several sections and paragraphs of this Lease are inserted for convenience of reference only and do not constitute a part of this Lease.

(f) Counterparts. This Lease may be executed by the parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(g) Severability of Provisions. Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(h) GOVERNING LAW. THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(i) Consent of Indenture Trustee. To the extent that any provision hereof or of any other Operative Document requires the consent of the Indenture Trustee, such consent shall not be required in the event that the Indenture shall not be in effect.

(j) Quiet Enjoyment. The Lessor hereby recognizes the provisions of Section 14(d) to the Participation Agreement which are hereby incorporated by reference.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be duly executed and delivered by their respective officers thereunto duly authorized.

THE CONNECTICUT NATIONAL BANK,  
not in its individual capacity but solely as Owner  
Trustee

By *E. Hammer*  
Name: Elizabeth C. Hammer  
Title: Trust Officer

ASARCO INCORPORATED

By *Thomas J. Findley, Jr.*  
Name: THOMAS J. FINDLEY, JR.  
Title: Treasurer

STATE OF New York )  
 : ss.:  
CITY OF New York )

On this \_\_\_\_ day of April, 1991, before me personally appeared Thomas J. Findley Jr., to me personally known, who, being by me duly sworn, says that he is Treasurer of Asarco Incorporated, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kristine A. Heffernan  
Notary Public

My Commission Expires:

KRISTINE A. HEFFERNAN  
Notary Public, State of New York  
No. 31-4962065  
Qualified in New York County  
Commission Expires Feb. 12, 1992

STATE OF New York )  
 : ss.:  
COUNTY OF New York)

On this \_\_\_\_ day of April, 1991, before me personally appeared Elizabeth C. Hennessey, to me personally known, who, being by me duly sworn, says that she is Trust Officer of The Connecticut National Bank, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kristine A. Heffernan  
Notary Public

My Commission Expires:

KRISTINE A. HEFFERNAN  
Notary Public, State of New York  
No. 31-4982065  
Qualified in New York County  
Commission Expires Feb. 12, 1992

SCHEDULE 1  
to  
Lease

BASIC RENT

<u>Payment Date</u>	<u>Percentage of Lessor's Cost</u>
September 1, 1991	2.97920000
March 1, 1992	7.66876450
September 1, 1992	3.85743530
March 1, 1993	6.79052920
September 1, 1993	3.71664680
March 1, 1994	6.93131771
September 1, 1994	3.56234259
March 1, 1995	7.08562191
September 1, 1995	3.39322519
March 1, 1996	9.62095365
September 1, 1996	6.03541677
March 1, 1997	5.32494865
September 1, 1997	8.05925089
March 1, 1998	2.58871362
September 1, 1998	8.24158711
March 1, 1999	2.40637740
September 1, 1999	2.31310361
March 1, 2000	8.80556714
September 1, 2000	2.05045110
March 1, 2001	10.96372774
September 1, 2001	1.75324142
March 1, 2002	11.26093741
September 1, 2002	1.44630390
March 1, 2003	11.56787494
September 1, 2003	1.09379610
March 1, 2004	11.92038274
September 1, 2004	12.83043151
March 1, 2005	0.18374733
September 1, 2005	13.01417884
March 1, 2006	0.00000000



LEASE AND INDENTURE SUPPLEMENT NO. \_\_\_\_ [B]

Dated \_\_\_\_\_, 19\_\_

Among

THE CONNECTICUT NATIONAL BANK,  
not in its individual capacity but solely as trustee,  
Lessor/Owner Trustee,

ASARCO INCORPORATED  
Lessee

and

STATE STREET BANK AND TRUST COMPANY  
OF CONNECTICUT, NATIONAL ASSOCIATION,  
not in its individual capacity but solely as trustee,  
Indenture Trustee

MOBILE MINING EQUIPMENT  
AND  
RAILROAD ROLLING STOCK

---

ALL RIGHT, TITLE AND INTEREST IN AND TO THIS LEASE AND INDENTURE SUPPLEMENT AND TO THE UNITS COVERED HEREBY ON THE PART OF THE CONNECTICUT NATIONAL BANK, AS OWNER TRUSTEE, HAS BEEN ASSIGNED TO AND IS SUBJECT TO A LIEN AND SECURITY INTEREST IN FAVOR OF STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE UNDER AN INDENTURE AND SECURITY AGREEMENT [B] DATED AS OF MARCH 1, 1991. TO THE EXTENT, IF ANY, THAT THIS LEASE AND INDENTURE SUPPLEMENT NO. \_\_\_\_ CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE AND INDENTURE SUPPLEMENT NO. \_\_\_\_ MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, ON THE SIGNATURE PAGE THEREOF.

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[FILED WITH THE INTERSTATE COMMERCE COMMISSION  
PURSUANT TO 49 U.S.C. § 11303  
ON \_\_\_\_\_, 1991 at \_\_\_\_:\_\_\_\_.M.  
RECORDATION NUMBER \_\_\_\_\_]

[This Agreement is one of 3 substantially identical Agreements styled on the cover pages thereof versions "A", "B" and "C" and relating respectively to 10-year Units other than shovels, 15-year Units and 10-year Units which are shovels.]

THIS LEASE AND INDENTURE SUPPLEMENT NO. \_\_, dated \_\_\_\_\_, 19\_\_, among THE CONNECTICUT NATIONAL BANK, a national banking association, not in its individual capacity but solely as Owner Trustee ("Lessor" or "Owner Trustee") under that certain Trust Agreement dated as of March 1, 1991 (the "Trust Agreement") with AT&T CAPITAL HOLDINGS INTERNATIONAL, INC., a Delaware corporation, ASARCO INCORPORATED, a New Jersey corporation ("Lessee") and STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity but solely as Indenture Trustee (the "Indenture Trustee").

W I T N E S S E T H :

WHEREAS, Lessor, Lessee and the Indenture Trustee have, with the other parties thereto, heretofore entered into a Participation Agreement (the "Participation Agreement"), Lessor and Lessee have heretofore entered into a Lease Agreement (the "Lease"), and the Indenture Trustee and Owner Trustee have heretofore entered into an Indenture and Security Agreement (the "Indenture"), each dated as of March 1, 1991 (capitalized terms used herein without definitions having the respective meanings set forth in Schedule X to the Lease);

WHEREAS, the Participation Agreement and the Lease provide that on the Closing Date the Lessee shall deliver to Owner Trustee a Bill of Sale dated such date by which the Lessee bargains, conveys, assigns, sets over, sells and delivers to Owner Trustee, and Owner Trustee purchases and accepts from the Lessee, the Units to be conveyed on such Closing Date, and said Bill of Sale has been delivered by the Lessee and accepted by Owner Trustee on such Closing Date;

WHEREAS, the Participation Agreement, the Lease, and the Indenture provide for the execution of a Lease and Indenture Supplement substantially in the form hereof for the purposes of leasing the Units under the Lease as and when delivered by the Lessor to the Lessee in accordance with the terms thereof and subjecting such Units to the lien of the Indenture;

NOW, THEREFORE, in consideration of the premises and for good and sufficient consideration, the Lessor, the Lessee and the Indenture Trustee hereby agree as follows:

1. The Lessor hereby delivers and leases to Lessee, and Lessee hereby accepts and leases from Lessor, under

the Lease as hereby supplemented, the Units listed on Schedule 1 hereto.

2. The Lessee hereby confirms to Lessor that Lessee has accepted such Units for all purposes hereof and of the Lease.

3. The aggregate Lessor's Cost of the Units leased hereunder is \$\_\_\_\_\_ is and the amounts comprising such Lessor's Cost and the Lessor's Cost of each Unit leased hereunder are set forth on Schedule 1 hereto. The Stipulated Loss Values and Termination Values for the Units leased hereunder are set forth respectively, on Schedules 2 and 3 hereto.

4. The Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease and Indenture Supplement No. \_\_, on each Payment Date to pay Basic Rent to the Lessor for each Unit leased hereunder as provided for in the Lease.

5. In order to secure the prompt payment of the principal of and Premium, if any, and interest on the Notes issued on the date hereof and on the other Notes, Lessor has granted, conveyed, pledged, sold, mortgaged, assigned, transferred and set over a security interest unto the Indenture Trustee in (i) the Units listed on Schedule 1 hereto and (ii) the Lease and this Lease and Indenture Supplement No. \_\_, in each case excluding Excepted Property and Excepted Rights, to have and to hold unto the Indenture Trustee and its successors and its assigns for its and their own use and benefit forever.

6. All of the provisions of the Lease and the Indenture are hereby incorporated by reference in this Lease and Indenture Supplement No. \_\_ to the same extent as if fully set forth herein.

7. This Lease and Indenture Supplement No. \_\_ may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

8. THIS LEASE AND INDENTURE SUPPLEMENT NO. \_\_ IS BEING DELIVERED IN THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

IN WITNESS WHEREOF, Lessor, Lessee and Indenture  
Trustee have caused this Lease and Indenture Supplement  
No. \_\_\_ to be duly executed on the date and year set forth in  
the opening paragraph hereof.

Lessor/Owner Trustee

THE CONNECTICUT NATIONAL BANK,  
not in its individual capacity but  
solely as Owner Trustee

By \_\_\_\_\_  
Name:  
Title:

Lessee

ASARCO INCORPORATED

By \_\_\_\_\_  
Name:  
Title:

Indenture Trustee

STATE STREET BANK AND TRUST COMPANY  
OF CONNECTICUT, NATIONAL ASSOCIATION,  
not in its individual capacity but  
solely as Indenture Trustee

By \_\_\_\_\_  
Name:  
Title:

Receipt of this original counterpart of this Lease and Indenture Supplement No. \_\_\_\_\_ is hereby acknowledged this \_\_\_\_\_th day of \_\_\_\_\_, 19\_\_.

STATE STREET BANK AND TRUST  
COMPANY OF CONNECTICUT,  
NATIONAL ASSOCIATION,  
as Indenture Trustee

By \_\_\_\_\_  
Name:  
Title: 2/

2/ Language to appear in original counterpart only.

SCHEDULE 1  
to  
Lease and Indenture  
Supplement No. [B]

SCHEDULE OF UNITS TO BE DELIVERED

SCHEDULE 2  
to  
Lease and Indenture  
Supplement No. [B]

STIPULATED LOSS VALUE

If the event giving rise to an obligation to pay Stipulated Loss Value occurs and the actual date as of which the Owner Participant shall incur Federal income tax consequences shall be earlier or later than the date assumed in originally calculating the applicable Stipulated Loss Value, such value shall be appropriately adjusted, based upon the date as of which the Owner Participant incurred such tax consequences but otherwise on the same assumptions used to calculate the following values.

Notwithstanding any provision in the Lease to the contrary, the parties hereto acknowledge and agree that the following table of Stipulated Loss Value percentages has been calculated without regard to payment of Basic Rent as of the applicable Payment Date

Payment Date

Percentage  
of  
Lessor's Cost

SCHEDULE 3  
to  
Lease and Indenture  
Supplement No. [B]

TERMINATION VALUE

If the event giving rise to an obligation to pay Termination Value occurs and the actual date as of which the Owner Participant shall incur Federal income tax consequences shall be earlier or later than the date assumed in originally calculating the applicable Termination Value, such value shall be appropriately adjusted, based upon the date as of which the Owner Participant incurred such tax consequences but otherwise on the same assumptions used to calculate the following values. In any case where Termination Value shall be payable, there shall be added to the amount determined pursuant to the following schedule, the amount of any Premium, if any, payable in respect of the Notes.

Notwithstanding any provision in the Lease to the contrary, the parties hereto acknowledge and agree that the following table of Termination Value percentages has been calculated without regard to payment of Basic Rent as of the applicable Payment Date.

Payment Date

Percentage of  
Lessor's Cost



SCHEDULE X

DEFINITIONS [B]

"Act" shall have the meaning assigned in Section 102 of the Indenture.

"Affiliate" of any specified Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"After-Tax Basis", for purposes of all of the Operative Documents other than the Tax Indemnification Agreement, shall have the meaning assigned in Section 13.3 of the Participation Agreement and, for purposes of the Tax Indemnification Agreement, shall have the meaning assigned in Section 11 thereof.

"Amortization Deductions" shall have the meaning assigned in the Tax Indemnification Agreement.

"Applicable Law" shall mean all applicable laws, judgments, decrees, injunctions, writs and orders of any court, governmental agency or authority and rules (including rules of any self-regulatory organization (as defined in Section 3(a)(28) of the Securities Exchange Act of 1934, as amended)), regulations, orders, directives, licenses and permits of any governmental body, instrumentality, agency or authority, including, as to any Unit which is railroad rolling stock, the rules and regulations of the United States Department of Transportation, the ICC, the Federal Railroad Administration and the Field Manual of the Interchange Rules, as supplemented, of the Mechanical Division of the Association of American Railroads.

"Appraisal" shall have the meaning specified in Section 5(b) of the Participation Agreement.

"Appraisal Procedure" shall mean the procedure specified in the succeeding sentences for determining an

amount or value. If either the Owner Trustee (or the Owner Participant) or the Lessee shall give written notice to the other requesting determination of such amount or value by appraisal (the "Appraisal Request Date"), the Owner Participant and the Lessee shall consult for the purpose of appointing a mutually acceptable qualified Independent Appraiser. If such parties shall be unable to agree on an appraiser within 20 days of the Appraisal Request Date, such amount or value shall be determined by a panel of three Independent Appraisers, one of whom shall be selected by the Lessee, another of whom shall be selected by the Owner Participant (which right may be exercised by the Owner Trustee) and the third of whom shall be selected by such other two Appraisers or, if such Appraisers shall be unable to agree upon a third Appraiser within 10 days of the selection date of the second of such two Appraisers, by the American Arbitration Association; provided, that if either party shall not select its Appraiser within 35 days after the Appraisal Request Date, such amount or value shall be determined solely by the Appraiser selected by the other party. The Appraiser or Appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such amount or value within 45 days after the final appointment of any Appraiser pursuant hereto (but in no event may such determination be made more than 110 days following the Appraisal Request Date), and such determination shall be final and binding upon the parties. If three Appraisers shall be appointed, (a) if the median of the determinations of the Appraisers shall equal the mean of such determinations, such mean shall constitute the determination of the Appraisers, otherwise (b) the determination of the Appraiser that shall differ most from the other two Appraisers shall be excluded, the remaining two determinations shall be arithmetically averaged and such arithmetic average shall constitute the determination of the Appraisers. Fees and expenses relating to an Appraisal Procedure shall be payable as follows:

(i) if the Appraisal Procedure is utilized in connection with the exercise of remedies upon the occurrence of a Lease Event of Default under the Lease, all such fees and expenses shall be borne by the Lessee; and

(ii) in all other instances, the Lessor and the Lessee shall bear (A) its respective fees and expenses with respect to any Appraisal Procedure and (B) one-half of the fees and expenses of the Appraisers

participating in any Appraisal Procedure unless Lessee fails to exercise the option with respect to which such Appraisal Procedure arose, in which event Lessee shall pay all such fees and expenses.

"Appraiser" shall mean The Manufacturers' Appraisal Company in the case of the Appraisal delivered pursuant to Section 5(b) of the Participation Agreement and otherwise a Person engaged in the business of appraising property.

"Assumed Federal Rate" shall have the meaning assigned in the Tax Indemnification Agreement.

"Assumed State Rate" shall have the meaning assigned in the Tax Indemnification Agreement.

"Authorized Person" shall mean (i) in respect to the Owner Trustee, any Person authorized by or pursuant to the organizational documents, the by-laws or any Board Resolution of the institution acting as Owner Trustee (whether general or specific) to execute, deliver and take all other actions on behalf of the Owner Trustee in respect of any of the Operative Documents and (ii) with respect to any other entity, any Person authorized by or pursuant to the charter documents, the by-laws or any Board Resolution (in the case of a corporation), partnership agreement (in the case of a partnership), or trust agreement (in the case of a trust) to execute, deliver and take all other actions on behalf of such entity in respect of any of the Operative Documents, or any Responsible Officer or other Person authorized by such Resolution, agreement or Person.

"Basic Rent" shall mean the rent payable throughout the Lease Term pursuant to, and computed in accordance with, Section 9(b) of the Lease.

"Basic Term" with respect to any Unit shall mean the period beginning on the Basic Term Commencement Date and ending at 11:59 P.M. (New York City time) on the fifteenth anniversary of the Basic Term Commencement Date.

"Basic Term Commencement Date" shall mean September 1, 1991.

"Bill of Sale" shall mean the Bill of Sale [B] of the Lessee, dated the Closing Date, for the Units being delivered on such Closing Date.

"BOA" shall mean Bank of America National Trust and Savings Association, the Lessee's equity placement advisor.

"Board of Directors" shall mean, with respect to any Person, either the board of directors of such Person or any duly authorized committee of said board.

"Board Resolution" shall mean, with respect to any Person, a copy of a resolution certified by the secretary or an assistant secretary of such Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification.

"Business Day" shall mean any day other than a Saturday or Sunday or other day on which the banks in New Jersey, New York, New York, or Hartford, Connecticut (or, to the extent any payment is required to be made by or to the Indenture Trustee or the Indenture Trustee Guarantor, Boston, Massachusetts) are authorized or obligated to remain closed.

"Business Tax" shall have the meaning assigned in Section 13.2(b) of the Participation Agreement.

"Closing" with respect to any Unit shall mean the delivery of such Unit to and acceptance by or on behalf of the Owner Trustee from the Lessee pursuant to the Participation Agreement and the delivery of such Unit by the Owner Trustee to and acceptance by the Lessee pursuant to the Lease and Indenture Supplement delivered in connection therewith as provided in the Participation Agreement and Section 2 of the Lease.

"Closing Date" shall mean the date, which shall be a Business Day, on which the Closing occurs.

"Closing Notice" shall have the meaning assigned in Section 4(a) of the Participation Agreement.

"CNB" shall mean The Connecticut National Bank, in its individual capacity and not as Owner Trustee.

"Code" shall mean the Internal Revenue Code of 1986, as amended (or any successor federal income tax statute).

"Commitment" shall mean in the case of each Loan Participant, the amount of the loan to be made by such Loan Participant on the Closing Date pursuant to Section 2 of the Participation Agreement and, in the case of the Owner Participant, the amount of the investment to be made by the Owner Participant on the Closing Date pursuant to Section 3 of the Participation Agreement.

"Current Cost" shall have the meaning assigned in the Tax Indemnification Agreement.

"Deemed Last Utilized Taxes" shall, for purposes of all of the Operative Documents other than the Tax Indemnification Agreement, have the meaning assigned in Section 13.2(h) of the Participation Agreement, and for purposes of the Tax Indemnification Agreement, shall have the meaning assigned in Section 5(b) thereof.

"Depreciation Deductions" shall have the meaning assigned in the Tax Indemnification Agreement.

"Employee Benefit Plan" shall have the meaning assigned in Section 8(o) of the Participation Agreement.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, or any comparable successor law and the rules issued and regulations promulgated thereunder.

"ERISA Affiliate" shall have the meaning assigned in Section 8(o) of the Participation Agreement.

"Event of Loss" shall mean with respect to any Unit any of the following events occurring during the Lease Term: (i) such Unit suffers an actual or constructive total loss, (ii) such Unit suffers destruction, damage or contamination beyond economic repair or such Unit is rendered permanently unfit for commercial use by the Lessee and for the purpose for which it was designed, as determined in good faith by the Lessee and evidenced by a certificate of the Treasurer or Assistant Treasurer of the Lessee to such effect, (iii) such Unit is taken, condemned or requisitioned for title by any governmental authority, (iv) such Unit is taken, condemned or requisitioned for use by any governmental authority in the United States for a period extending beyond twelve months or (v) such Unit is lost, stolen or otherwise disappears. The date of such Event of Loss shall be the date of such loss, damage, contamination,

condemnation, taking, requisition or disappearance, except that for purposes of an event specified in clause (iv) above, no Event of Loss shall be deemed to have occurred until the earlier of (1) the last day of the Lease Term and (2) twelve months, after the date of such taking, condemnation or requisition.

"Excepted Property" shall have the meaning assigned in the Granting Clauses of the Indenture.

"Excepted Rights" shall have the meaning assigned in the Granting Clauses of the Indenture.

"Fair Market Rental Value" for any Unit shall mean, for any period, the rent for such Unit (excluding any Severable Improvements title to which has vested in the Lessee but assuming that such Unit complies with Sections 2 and 5 of the Lease) for such period that would be obtained for a lease of such Unit in an arm's-length transaction between an informed and willing owner under no compulsion to lease and an informed and willing lessee, which determination shall be made (i) without deduction for any costs of removal of such Unit from the location of current use and (ii) on the assumption that such Unit is free and clear of all liens and is in the condition and repair in which it is required to be returned pursuant to Sections 2 and 5 of the Lease (but otherwise on an "as-is" basis); provided, however, that the determination of Fair Market Rental Value for the purposes of Section 15(b) of the Lease shall be based on the actual condition of such Unit at the time of such determination and shall take into account all liens on such Unit and any legal impediments to the prompt leasing of such Unit, notwithstanding the provisions of clause (ii) of this sentence.

"Fair Market Sale Value" for any Unit shall mean the sale value of such Unit (excluding any Severable Improvements title to which has vested in the Lessee) that would be obtained in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer-user, which determination shall be made (i) without deduction for any costs of removal of such Unit from the location of current use and (ii) on the assumption that such Unit is free and clear of all liens and is in the condition and repair in which it is required to be returned pursuant to Sections 2 and 5 of the Lease (but otherwise on an "as-is" basis); provided, however, that the determination of Fair Market Sale Value for the purposes

of Section 15(b) of the Lease shall be based on the actual condition of such Unit at the time of such determination and shall take into account all liens on such Unit (other than Owner Encumbrances), and any legal impediments to the prompt transfer of title to such Unit, notwithstanding the provisions of clause (ii) of this sentence.

"Federal Bankruptcy Code" shall mean the Bankruptcy Code of 1978, as amended, 11 U.S.C. §§ 101-1330.

"Final Determination" shall have the meaning assigned in the Tax Indemnification Agreement.

"First Boston" shall mean The First Boston Corporation, the Lessee's debt placement advisor.

"Foreign Tax Credit Loss" shall have the meaning assigned in the Tax Indemnification Agreement.

"Future Benefits" shall have the meaning assigned in the Tax Indemnification Agreement.

"Holder" shall mean the Person in whose name any Note is registered on the Note Register.

"ICC" shall mean the Interstate Commerce Commission and any agency or instrumentality of the United States government succeeding to its functions.

"Improvement" shall mean an improvement, structural change, modification or addition to any Unit made after the Closing Date.

"Inclusion" shall have the meaning assigned in the Tax Indemnification Agreement.

"Indemnatee" shall have the meaning provided in Section 13.1 of the Participation Agreement.

"Indenture" shall mean the Indenture and Security Agreement [B] dated as of March 1, 1991 between the Owner Trustee and the Indenture Trustee and substantially in the form of Exhibit B to the Participation Agreement, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of the Participation Agreement.

"Indenture Default" shall mean an event or condition which, with the giving of notice or lapse of time, or both, would become an Indenture Event of Default.

"Indenture Estate" shall have the meaning assigned in the Recital clause of the Indenture.

"Indenture Event of Default" shall mean any of the events specified in Section 601 of the Indenture.

"Indenture Trustee" shall mean State Street Bank and Trust Company of Connecticut, National Association together with any successors, permitted assigns and separate trustees and co-trustees as Indenture Trustee under the Indenture.

"Indenture Trustee Guarantee" shall mean the Guarantee dated as of March 1, 1991 by the Indenture Trustee Guarantor in favor of the Beneficiaries named therein.

"Indenture Trustee Guarantor" shall mean State Street Bank and Trust Company, a Massachusetts corporation.

"Independent" shall mean, when used with respect to any specified Person, such a Person who (1) is in fact independent, (2) does not have any financial interest in CNB, the Owner Trustee, the Owner Participant, the Owner Participant Guarantor, the Indenture Trustee, any Loan Participant or the Lessee or in any Affiliate of any of them and (3) is not connected with any Loan Participant, the Owner Participant, the Owner Participant Guarantor, or the Lessee or any such Affiliate as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions. Whenever it is provided that any Independent Person's opinion or certificate shall be furnished to the Indenture Trustee, such Person shall be appointed by the Lessee and approved by the Indenture Trustee in the exercise of reasonable care and such opinion or certificate shall state that the signer has read this definition and that the signer is Independent within the meaning thereof.

"Interest Deductions" shall have the meaning assigned in the Tax Indemnification Agreement.

"Interstate Commerce Act" shall mean the Interstate Commerce Act, as amended.

"Lease" shall mean the Lease Agreement [B] dated as of March 1, 1991 and substantially in the form of Exhibit C to the Participation Agreement between the Lessee and the Owner Trustee, as lessor, as the same may be amended, modi-



fied or supplemented from time to time in accordance with the provisions thereof and of the Indenture.

"Lease Default" shall mean an event or condition which, with the giving of notice or lapse of time, or both, would constitute a Lease Event of Default.

"Lease Event of Default" shall mean any of the events specified in Section 14 of the Lease.

"Lease and Indenture Supplement" shall mean the Lease and Indenture Supplement [B] among the Owner Trustee, the Lessee and the Indenture Trustee, dated the Closing Date, substantially in the form of Exhibit A to the Lease.

"Lease Term" shall mean the period from the Closing through the first Payment Date plus the Basic Term and the Renewal Term, if any.

"Lessee" shall mean ASARCO Incorporated, a New Jersey corporation, together with its successors and permitted assigns.

"Lessee Act or Omission" shall have the meaning assigned in the Tax Indemnification Agreement.

"Lessee Related Party" shall have the meaning assigned in the Tax Indemnification Agreement.

"Lessor's Cost" for each Unit shall be the amount specified therefor in Schedule 1 to the Lease and Indenture Supplement relating thereto.

"Liabilities" shall have the meaning assigned in Section 13.1 of the Participation Agreement.

"Loan Participant" shall mean each of the financial institutions listed as a Loan Participant in Schedule 1 to the Participation Agreement, and each other Holder of a Note from time to time, and their respective successors and assigns.

"Loss of Amortization Deductions" shall have the meaning assigned in the Tax Indemnification Agreement.

"Loss of Depreciation Deductions" shall have the meaning assigned in the Tax Indemnification Agreement.

"Loss of Interest Deductions" shall have the meaning assigned in the Tax Indemnification Agreement.

"Loss of State Tax Benefits" shall have the meaning assigned in the Tax Indemnification Agreement.

"Loss of Tax Benefits" shall have the meaning assigned in the Tax Indemnification Agreement.

"Manufacturer" shall mean each manufacturer of a Unit together with its successors and permitted assigns.

"Multiemployer Plan" shall have the meaning assigned in Section 8(o) of the Participation Agreement.

"Net Return" shall mean Owner Participant's anticipated nominal after-tax yield and net after-tax cash flow, calculated in a pattern similar to the original lease proposal of Owner Participant relating to the transactions contemplated by the Participation Agreement, determined utilizing the multiple investment sinking fund method of analysis and computed on the same assumptions and by the same methodology as were utilized by Owner Participant in determining Basic Rent as of the Closing Date.

"Nonseverable Improvement" shall mean, at any time, (i) an Improvement that shall not be "readily removable from a Unit without causing material damage to such Unit" within the meaning of Revenue Procedure 75-21 promulgated by the Internal Revenue Service or other similar law, regulation or procedure then in effect or (ii) any Improvement required by Applicable Law or insurance policy.

"Non-U.S. Person" shall mean any Person other than (i) a citizen or resident of the United States, as defined in section 7701(a)(9) of the Code (for purposes of this definition, the "United States"), (ii) a corporation, partnership or other entity created or organized under the laws of the United States or any political subdivision thereof or therein or (iii) any estate or trust that is subject to United States Federal income taxation regardless of the source of its income.

"Note Register" shall have the meaning assigned in Section 204 of the Indenture.

"Notes" shall have the meaning specified in the Indenture and more particularly includes the Notes issued on

the Closing Date and any other Notes authenticated and delivered under the Indenture.

"Notice" shall have the meaning assigned in Section 19 of the Participation Agreement.

"Obligations" shall have the meaning assigned in the Recital clause of the Indenture.

"Officer's Certificate" shall mean with respect to any Person, a certificate signed by the Chairman of the Board, the President or a Vice President of such Person or any Authorized Person of such Person.

"Operative Documents" shall mean the Participation Agreement, the Trust Agreement, the Indenture, the Notes, the Owner Participant Guaranty, the Indenture Trustee Guarantee, the Lease, each Lease and Indenture Supplement, each Bill of Sale, the Tax Indemnification Agreement and any other agreement, instrument or document delivered in connection with the foregoing.

"Opinion of Counsel" shall mean a written opinion of counsel, who shall be acceptable to the Person to whom such opinion is to be addressed pursuant to any of the Operative Documents.

"Original Net Return" shall have the meaning assigned in the Tax Indemnification Agreement.

"Outstanding" when used with respect to the Notes shall mean, as of the date of determination, all the Notes theretofore authenticated and delivered under the Indenture, except:

(1) Notes theretofore cancelled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation;

(2) Notes for whose payment or redemption money in the necessary amount has been theretofore deposited with the Indenture Trustee, provided, that, if such Notes are to be redeemed, notice of such redemption has been duly given pursuant to the Indenture or provision therefor satisfactory to the Indenture Trustee has been made;

(3) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered under the Indenture; and

(4) Notes alleged to have been destroyed, lost or stolen which have been paid as provided in Section 205 of the Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Notes Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Owner Participant, the Owner Trustee or the Lessee, or any Affiliate of any of them, shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Indenture Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes that the Indenture Trustee knows to be so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Indenture Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Owner Participant, the Owner Trustee or the Lessee, or any Affiliate of any of them.

"Overdue Rate" shall mean with respect to (i) any amount (other than any amount constituting Excepted Property), a rate per annum equal to 11.60%, and (ii) any amount constituting Excepted Property, the Prime Rate plus 2%, in each case computed on the basis of a 360-day year of twelve 30-day months.

"Owner Encumbrances" shall mean any liens, security interests or encumbrances against any part of the Indenture Estate or the Trust Estate that result from acts of, or any failure to act by, or as a result of claims (including any taxes) against CNB, the Owner Trustee or the Owner Participant arising out of any event or condition unrelated to (x) the ownership of a Unit, (y) the administration of the Trust Estate or (z) the transactions contemplated by the Operative Documents, excluding liens, security interests and encumbrances arising from any tax or any other matter for which the Lessee is obligated to indemnify under the Tax Indemnification Agreement or the Participation Agreement, other than any such tax for which the Lessee has already made full indemnification pursuant to such agreements.

"Owner Participant" shall mean AT&T Capital Holdings International, Inc., a Delaware corporation, together with its successors and permitted assigns.

"Owner Participant Guaranty" shall mean the Owner Participant Guaranty dated as of March 1, 1991 by the Owner Participant Guarantor in favor of the Beneficiaries named therein.

"Owner Participant Guarantor" shall mean AT&T Capital Corporation, a Delaware corporation, together with its successors and permitted assigns.

"Owner Trustee" shall mean CNB in its capacity as trustee under the Trust Agreement, together with its successors and permitted assigns as Owner Trustee under the Trust Agreement.

"Owner Trustee Request" shall mean a written request signed in the name of the Owner Trustee by an Authorized Person, consented to by the Lessee, and delivered to the Indenture Trustee together with a form of any writing to be executed by the Indenture Trustee pursuant to such request.

"Participants" shall mean, collectively, the Loan Participants and the Owner Participant.

"Participation Agreement" shall mean the Participation Agreement [B] dated as of March 1, 1991, among the Lessee, the Owner Participant, the Owner Participant Guarantor, the Loan Participants, the Owner Trustee and the Indenture Trustee, as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and of the Indenture.

"Payment Date" shall initially mean September 1, 1991 and each March 1 and September 1 thereafter of each year occurring during the Basic Term or the Renewal Term, provided that if any such date shall not be a Business Day, then "Payment Date" shall mean the next succeeding Business Day.

"PBGC" means the Pension Benefit Guaranty Corporation and any Person succeeding to the functions thereof.

"Percentage Commitment" of each Participant in respect of the Units shall mean the percentage set forth opposite such Participant's name in Schedule 1 to the Participation Agreement.

"Permitted Act" shall have the meaning assigned in the Tax Indemnification Agreement.

"Permitted Contest" shall mean a good faith contest of (i) the legality or validity of any of the taxes, assessments, levies, fees or other governmental charges, or other claims, Liabilities (as defined in Section 13.1 of the Participation Agreement), liens or impositions which, under the terms of the Participation Agreement or the Lease are required to be paid or discharged by the Lessee, the Owner Trustee or the Owner Participant, as the case may be, but for such contest, or (ii) the legality, validity or necessity for compliance with any Applicable Law of the jurisdiction in which any Unit is located or the need for compliance with acts, rules, permits, regulations or orders of any commissions, boards or other legislative, executive or judicial bodies or officers; provided that any such good faith contest described in clause (i) or (ii) above shall be pursued by appropriate proceedings (including, without limitation, with respect to the posting of necessary bonds or securities) in a manner which will not result in (x) the imposition of any criminal or material civil penalty for which adequate bond is not provided to the Indemnified Person or lien, material risk of foreclosure, forfeiture, loss or loss of use or sale of, or other adverse effect on any or all of the Trust Estate or the Indenture Estate or the title, property or right therein of, such Indemnified Person or (y) any adverse effect on the applicability or scope or amount of coverage of any of the insurance required to be maintained under Section 10 of the Lease or any tax benefits to the Owner Participant for which the Lessee has not agreed to indemnify under the Tax Indemnification Agreement or Section 13.2 of the Participation Agreement or (z) any material adverse effect on any Unit or the interests of the Lessee, the Owner Trustee, the Owner Participant, the Indenture Trustee or any Loan Participant in such Unit.

"Permitted Encumbrances" shall mean (a) the rights of the Indenture Trustee under the Indenture, (b) the rights of the Lessee under the Lease, including, without limitation, subleases of and interchange agreements involving any Unit in accordance with the terms of the Lease, (c) the rights of the Owner Trustee and the Owner Participant under the Trust Agreement, which rights are subject to the liens and security interests created by the Indenture, (d) liens for taxes either not yet due or being contested by the Lessee by Permitted Contest which do not involve a risk of a sale, forfeiture, loss or loss of use of a Unit and (e)

undetermined or inchoate materialmen's, mechanic's, workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and security obligations which are not delinquent or which are being contested by the Lessee by Permitted Contest.

"Permitted Investments" shall mean (i) direct obligations of the United States of America and agencies thereof having maturities of not more than one year, (ii) obligations fully guaranteed by the United States of America, certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the States thereof having combined capital and surplus and retained earnings of at least \$750,000,000 (including the Indenture Trustee and the Owner Trustee if such conditions are met), in either case having maturities of not more than one year, (iii) commercial paper having maturities of not more than 270 days of companies, banks, trust companies, or national banking associations incorporated or doing business under the laws of the United States of America or one of the States thereof and in each case having a rating assigned to such commercial paper by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization and (iv) shares of a money market fund registered under the Investment Company Act of 1940, the sole assets of which are described in clause (i) above. If all of the above investments are unavailable, the entire amount to be invested may be used to purchase Federal Funds from an entity described in (ii) of the preceding sentence.

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Premium" shall mean, with respect to a prepayment of the Notes, an amount equal to the difference of (x) the present value, discounted on a semiannually compounded basis utilizing an interest factor equal to the Reinvestment Yield, of the remaining principal payments provided for in Section 401(e) of the Indenture (including the payment at final maturity) and the scheduled interest payments on such

Notes from the respective dates on which, but for such prepayment, such principal payments and interest payments would have been payable, minus (y) the principal amount of the Notes so to be prepaid. For purposes of this definition, "Reinvestment Yield" shall mean, with respect to the Notes, the lesser of (A) the interest rate then applicable to the Notes, and (B) the sum of .50% plus the arithmetic mean of the two most recent weekly average yields to maturity for actively traded marketable U.S. Treasury fixed interest rate securities (adjusted to constant maturities equal to the remaining Weighted Average Life to Maturity as of the date of the proposed prepayment of the Notes) released on the first business day of the week preceding the week in which the date of such prepayment occurs, or, if such release is not published for such period, of such reasonably comparable index as may be designated by the holder or holders of at least 66-2/3% of the principal amount of the Notes Outstanding to be prepaid for such period. If no possible maturity exactly corresponds to such Weighted Average Life to Maturity, yields for the two most closely corresponding published maturities shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Yield shall be interpolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. In no event shall the Premium be less than zero, or shall the Premium be payable after the tenth anniversary of the Closing Date.

"Prime Rate" shall mean the rate announced from time to time by The Chase Manhattan Bank (National Association) as its prime or base commercial lending rate.

"Purchase Order" shall mean the documentation relating to the purchase by the Lessee from the Manufacturers of the Units.

"Reasonable Basis" for a position shall exist if tax counsel may properly advise reporting such position on a tax return in accordance with Formal Opinion 85-352 issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association, as revised or supplemented from time to time.

"Recapture" shall have the meaning assigned in the Tax Indemnification Agreement.



"Redemption Date" when used with respect to any Note to be redeemed shall mean the date fixed for such redemption pursuant to the Indenture.

"Reimbursement Amount" shall have the meaning assigned in Section 9(b)(vii)(ii) of the Participation Agreement.

"Renewal Term" shall have the meaning assigned in Section 2(d) of the Lease.

"Rent" shall mean Basic Rent, renewal rent and Supplemental Rent, collectively.

"Required Act" shall have the meaning assigned in the Tax Indemnification Agreement.

"Replacement Unit" shall mean a Unit substantially similar in material, dimension, condition, utility, fair market value, residual value and remaining useful life and intended function to the Unit with respect to which an Event of Loss has occurred and which is being replaced pursuant to Section 11(c) of the Lease.

"Responsible Officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Operative Document, the Chairman, Controller, Executive Vice President, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto.

"Scheduled Closing Date" shall have the meaning assigned in Section 4(a) of the Participation Agreement.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Severable Improvement" shall mean any Improvement other than a Nonseverable Improvement.

"Stated Maturity" when used with respect to any Note or any installment of interest thereon shall mean the

date specified in such Note as the fixed date on which the principal of such Note or such installment of interest is due and payable.

"State Tax Deductions" shall have the meaning assigned in the Tax Indemnification Agreement.

"Stipulated Loss Payment Date" shall mean a date upon which payment of Stipulated Loss Value is required to be made by the Lessee pursuant to Section 11 of the Lease.

"Stipulated Loss Value" with respect to any Unit subjected to the terms of the Lease pursuant to a Lease and Indenture Supplement as of any Payment Date shall mean, for the Basic Term, an amount determined by multiplying Lessor's Cost for such Unit by the percentage specified in Schedule 2 to such Lease and Indenture Supplement opposite such Payment Date and, for the Renewal Term, an amount equal to the Fair Market Sale Value of any such Unit at the commencement of the Renewal Term, decreasing on a straight-line basis to the Fair Market Sale Value at the expiration of the Renewal Term; provided, however, that, notwithstanding any provision of the Lease (including but not limited to the adjustments to be made pursuant to Section 9 of the Lease), "Stipulated Loss Value" as of any Payment Date, plus the Basic Rent or renewal rent in respect of such Unit payable on such Payment Date (if and to the extent Basic Rent or renewal rent is then being paid in arrears) shall in no event be less than, for the Basic Term, a sum sufficient to pay with respect to any such Unit the portion of the aggregate unpaid principal amount of the Notes Outstanding on such Payment Date together with interest thereon accrued to such Payment Date as determined pursuant to the Indenture which is due and payable as a result of the payment of Stipulated Loss Value with respect thereto.

"Supplemental Rent" shall mean any and all amounts (other than Basic Rent), whether or not specified in Section 9(c) of the Lease, that the Lessee assumes the obligation to pay or agrees to pay under the Lease, the Tax Indemnification Agreement or the Participation Agreement to the Owner Trustee, the Owner Participant or others, including amounts payable as indemnity payments, payments of Stipulated Loss Value and Termination Value under the Lease, Premium on the Notes and all amounts payable by the Lessee pursuant to Section 9 of the Lease.

"Tax" shall have the meaning assigned in Section 13.2(a) of the Participation Agreement.

"Tax Assumptions" shall have the meaning assigned in the Tax Indemnification Agreement.

"Tax Forms" shall have the meaning assigned in Section 13.2(b)(9) of the Participation Agreement.

"Tax Indemnification Agreement" shall mean the Tax Indemnification Agreement [B] dated as of March 1, 1991 between the Lessee and the Owner Participant as the same may be amended, modified or supplemented pursuant to the provisions thereof.

"Tax Indemnitee" shall have the meaning assigned in Section 13.2(a) of the Participation Agreement.

"Tax Representations" shall have the meaning assigned in the Tax Indemnification Agreement.

"Termination Date" shall have the meaning assigned in Section 12(a) of the Lease.

"Termination Value" with respect to any Unit subjected to the terms of the Lease pursuant to a Lease and Indenture Supplement as of any Payment Date shall mean the sum of (a) an amount determined by multiplying Lessor's Cost for such Unit by the percentage specified in Schedule 3 to such Lease and Indenture Supplement opposite such Payment Date plus (b) the Premium, if any, payable on such Payment Date; provided, however, that, notwithstanding any provision of the Lease (including but not limited to the adjustments to be made pursuant to Section 9 of the Lease), "Termination Value" as of any Payment Date, plus the Basic Rent in respect of such Unit payable on such Payment Date (if and to the extent Basic Rent is then being paid in arrears) shall in no event be less than a sum sufficient to pay with respect to any such Unit the portion of the aggregate unpaid principal amount of the Notes Outstanding on such Payment Date together with interest thereon accrued to such Payment Date and the Premium, if any, as determined pursuant to the Indenture which is due and payable as a result of the payment of Termination Value with respect thereto.

"TIA" shall mean the Trust Indenture Act of 1939, as in effect from time to time.

"Transaction Costs" shall have the meaning assigned in Section 17 of the Participation Agreement.

"Transfer" shall have the meaning assigned in Section 22 of the Participation Agreement.

"Trust Agreement" shall mean the Trust Agreement [B] dated as of March 1, 1991 between CNB and the Owner Participant and substantially in the form of Exhibit A to the Participation Agreement as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof, of the Indenture and of the Participation Agreement.

"Trust Estate" shall have the meaning assigned to it in Section 1(d) of the Trust Agreement.

"Unit" shall mean each item of mobile mining equipment and railroad rolling stock sold to Owner Trustee pursuant to the Bill of Sale and subjected to the Lease pursuant to the applicable provisions thereof.

"Verifying Accountant" shall mean an accountant, investment advisor, lease broker or vendor selected by the Owner Participant and reasonably acceptable to the Lessee (it being understood that the representation of, or a conflict in representing the Owner Participant or the Lessee is relevant in determining the reasonableness of such acceptance).

"Weighted Average Life to Maturity" with respect to the Notes means as at the time of the determination thereof the number of years obtained by dividing the then Remaining Dollar-years of the Notes by the then outstanding principal amount of the Notes. The term "Remaining Dollar-years" with respect to the Notes means the amount obtained by (1) multiplying the amount of each then remaining principal payment provided for in Section 401(e) of the Indenture (including the principal payment at final maturity), by the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination of the Weighted Average Life to Maturity and the date of that required payment and (2) totaling all the products obtained in (1).